

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION  
4 REMBRANDT WIRELESS ) (  
5 TECHNOLOGIES, LP ) ( CIVIL DOCKET NO.  
6 ) ( 2:13-CV-213-JRG-RSP  
7 VS. ) ( MARSHALL, TEXAS  
8 ) (  
9 SAMSUNG ELECTRONICS CO., LTD., ) ( FEBRUARY 2, 2015  
10 ET AL. ) ( 1:30 P.M.

11 PRE-TRIAL HEARING  
12 BEFORE THE HONORABLE JUDGE ROY S. PAYNE  
13 UNITED STATES MAGISTRATE JUDGE  
14

15 APPEARANCES:

16 FOR THE PLAINTIFF: (See sign-in sheets docketed in  
17 minutes of this hearing.)

18 FOR THE DEFENDANTS: (See sign-in sheets docketed in  
19 minutes of this hearing.)

20 COURT REPORTER: Shelly Holmes, CSR-TCRR  
21 Official Reporter  
22 United States District Court  
23 Eastern District of Texas  
24 Marshall Division  
100 E. Houston Street  
Marshall, Texas 75670  
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25 (Proceedings recorded by mechanical stenography, transcript  
produced on a CAT system.)

## I N D E X

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Appearances

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Court Reporter's Certificate

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1 LAW CLERK: All rise.

2 THE COURT: Good afternoon. Please be seated.

3 For the record, we're here for the completion of the  
4 pre-trial conference in Rembrandt versus Samsung, which is Case  
5 No. 2:13-213 on our docket.

6 Would counsel state their appearances for the record?

7 MR. WARD: Good afternoon, Your Honor. Johnny Ward,  
8 Amir Alavi, Eric Enger, Miranda Jones, Blaine Larson, Kyril  
9 Talanov for Rembrandt, and we're ready.

10 THE COURT: All right. Thank you, Mr. Ward.

11 MR. SMITH: And, Your Honor, for Samsung, Michael  
12 Smith, Gabrielle Higgins, Rebecca Hermes, Jeff Sherwood --

13 MR. SHERWOOD: Good afternoon, Your Honor.

14 MR. SMITH: -- Jerry --

15 THE COURT: Good afternoon.

16 MR. SMITH: -- Haddad, and Director of Litigation,  
17 Michelle Yang in the gallery. And we're ready to proceed, Your  
18 Honor.

19 THE COURT: All right. Thank you, Mr. Smith.

20 I know that the primary agenda for this hearing is the  
21 objection to exhibits and deposition designations. I'm aware  
22 of one other issue, that being the issue about the use of  
23 Dr. Schneck's testimony.

24 Are there any other issues that the Plaintiff has on  
25 the agenda for this conference?

1 MR. ALAVI: We do, Your Honor. Amir Alavi for the  
2 Plaintiff.

3 We had a -- a request for clarification, make sure we  
4 fully understood the scope of the Court's motion in limine with  
5 respect to the IPRs that we'd just like to raise for a -- a  
6 brief moment with the Court.

7 THE COURT: All right. I'll add that to the agenda.

8 MS. HIGGINS: Your Honor, I wanted to show --

9 THE COURT: Yes, ma'am.

10 MS. HIGGINS: -- an item. We'd also like to seek the  
11 Court's further guidance with respect to BlackBerry's motion to  
12 seal and the order in that regard.

13 THE COURT: All right.

14 MR. SHERWOOD: Your Honor, actually I have --

15 THE COURT: Thank you, Ms. Higgins.

16 MR. SHERWOOD: -- two other things to add to the list.

17 THE COURT: All right, Mr. Sherwood.

18 MR. SHERWOOD: We have, first of all, a pending motion  
19 for summary judgment with respect to marking.

20 THE COURT: Uh-huh.

21 MR. SHERWOOD: And -- and secondarily, reaching back  
22 to the motions in limine that the Court heard, I just have a  
23 couple of sort of open-the-door question clarifications I'd  
24 like to ask at some point of the Court. I think they're very  
25 straightforward, should only take a minute, but...

1 THE COURT: And what is the subject matter of those?

2 MR. SHERWOOD: They relate to the motions in limine  
3 that the Court has already ruled on, two of them in particular.

4 THE COURT: Which two?

5 MR. SHERWOOD: The -- the one with respect to the --  
6 poker player was one of them, and the other one was with  
7 respect to the privilege, the invocation of privilege.

8 THE COURT: All right. I'll put those on the list.

9 MR. SHERWOOD: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Sherwood.

11 All right. Do counsel have any approach that they  
12 want to suggest regarding the best way to take up the  
13 objections to exhibits?

14 Mr. Alavi?

15 MR. ALAVI: Your Honor, I wish I had a good  
16 suggestion. I think what is going to happen, and we've done it  
17 a little bit here, is based on the motions in limine and some  
18 discussions we've had with counsel, I think you're going to  
19 find that the parties are going to withdraw some exhibits and  
20 objections on the fly.

21 We've worked best we could, given travel schedules.  
22 Unfortunately didn't get an opportunity to meet in person to go  
23 exhibit-by-exhibit as -- as might have been fruitful, but I  
24 think you're going to see from both sides, both sides'  
25 willingness to withdraw objections and exhibits, so that should

1 speed things up.

2 I would -- I would say -- one thing that I would  
3 suggest, Your Honor, and if I may approach, the parties,  
4 without letting the Court know, agreed to a -- a legend for  
5 objections on the -- on the exhibits. And so we are printing  
6 out two copies for the Court of that -- of those -- that legend  
7 which may make it a little easier. So as soon as they -- we  
8 have two copies -- I gave it to counsel, if I may approach  
9 counsel's table. We have copies of that for Court, and it may  
10 make things go a little smoother.

11 THE COURT: All right.

12 MR. ALAVI: And they're not stapled. There's a  
13 stapler here I've used -- I've used a couple of times. Thank  
14 you, Your Honor.

15 Beyond that, I think, unfortunately, we're going to  
16 have to plow through it. I do think there's the possibility of  
17 grouping exhibits together because there are certain exhibits  
18 that are fundamentally identical. And once the Court rules on,  
19 for example, an authenticity or hearsay objection, it may then  
20 prompt one party to withdraw the duplicative objections to  
21 those same exhibits. So I think there's an opportunity, at  
22 least from the Plaintiff's perspective, to the extent we see  
23 those, we'll identify those and let you know that it's  
24 applicable to a large group of -- of exhibits.

25 THE COURT: All right, then. We can start off with

1 the Plaintiff's objections and the Defendants' -- the  
2 Plaintiff's exhibits, I'm sorry, and the Defendants' objections  
3 thereto.

4 MR. ALAVI: Your Honor, I think to speed things up,  
5 the Plaintiffs are withdrawing Exhibits 13, 14, 16, 17, and 18.

6 THE COURT: Just one minute. All right. You can list  
7 those again if you would.

8 MR. ALAVI: Yes, Your Honor. Plaintiffs withdraw  
9 Exhibits 13, 14, 16, 17, and 18.

10 THE COURT: Okay.

11 MR. ALAVI: And if you go to Page --

12 MR. ENGER: No, not 18.

13 MR. ALAVI: Not 18? My mistake.

14 THE COURT: And, Mr. Alavi, I tell you what, if you  
15 would speak to the microphone, we'll get a better record here.

16 MR. ALAVI: Do it this way. I made -- Your Honor, I  
17 made a mistake apparently, so let me -- let me correct that.

18 Plaintiffs are withdrawing Exhibits 13, 14, 16, and  
19 17.

20 THE COURT: Not 18?

21 MR. ALAVI: Not 18. And I apologize, Your Honor.

22 THE COURT: Okay.

23 MR. ALAVI: And then on Page 3, Plaintiffs withdraw  
24 Exhibits 44 and 46.

25 And then on Page 4, Plaintiffs withdraw Exhibits 51

1 through 56.

2 So as I understand it, the first objection is to  
3 Plaintiff's Exhibit 15.

4 THE COURT: All right.

5 MR. ALAVI: And, Your Honor, is it -- would you like  
6 us to use the podium, or is it okay if we stay at counsel's  
7 table just to go a little faster and use the microphone?

8 THE COURT: As long as you're speaking to a  
9 microphone, I can handle either way.

10 MR. ALAVI: Right. Thank you, Your Honor.

11 THE COURT: All right. What's the objection to  
12 Exhibit 15?

13 MR. HADDAD: Your Honor, Exhibit 15 is -- are pictures  
14 of awards given to the inventor on the patents-in-suit from PC  
15 Magazine and -- and other places. I mean, this is not the type  
16 of exhibit that should come into evidence.

17 THE COURT: And I guess that's what I'm looking for is  
18 why not? What's your objection?

19 MR. HADDAD: Well, we don't think it's relevant, Your  
20 Honor, to the patents-in-suit.

21 THE COURT: Okay.

22 MR. HADDAD: We don't know whether these invention --  
23 whether these were given for the patents-in-suit, other work  
24 he's done. I know he was an inventor -- a prolific inventor.  
25 He was named on many, many other patents. I forget how many,



1 but it might be, I don't know, a hundred. He was, you know,  
2 working at a big technology company when -- in the -- in the  
3 mid-'90s. And there's just no relationship between these  
4 awards and the patents-in-suit. It's -- it's -- it'd be  
5 prejudicial. It's -- it's as if he got an award for this  
6 invention, and it has -- there's no relationship between it and  
7 the invention -- the -- the patent that's at -- in suit, Your  
8 Honor.

9 THE COURT: The fact that the inventor has won awards  
10 is perhaps of marginal relevance, but it is relevant. And I'll  
11 overrule the objection. You can certainly point out on cross  
12 whether or not these relate directly to the patent-in-suit.  
13 But I'll overrule that objection.

14 What's the next objection?

15 MR. ALAVI: Your Honor, the -- the next exhibit that  
16 has objections is Exhibit 22.

17 THE COURT: All right. What is Exhibit 22?

18 MR. HADDAD: You want to address that or --

19 MR. ALAVI: Your Honor, what we can do is we can put  
20 the exhibits on the Court's screen, if that helps the Court  
21 look --

22 THE COURT: Well, some of them I can tell a little bit  
23 based on the description, but this is only described as an  
24 exhibit to a report.

25 MR. ALAVI: So, Your Honor, Exhibit 22 is a

1 Broadcom -- a series of Broadcom specification sheets that  
2 Broadcom makes available for -- it's CSR, I'm sorry, my  
3 mistake. I'm sorry, Your Honor. It's spec sheets for CSR and  
4 Texas Instrument Bluetooth 2.0, plus EDR chipsets. Dr. Morrow,  
5 who is a technical expert in the -- in the case, reviewed those  
6 and analyzed whether or not there was a basis to compare those  
7 chipsets for purposes of -- of damages, which then  
8 Mr. Weinstein relied upon. So these are the actual spec  
9 sheets.

10 THE COURT: Okay. Let me hear the objection,  
11 Mr. Haddad.

12 MR. HADDAD: The objection, Your Honor, is that  
13 Samsung doesn't use these chips in its products, and -- well,  
14 that's -- that's the objection, it's not as -- not relevant.

15 THE COURT: All right. And do you agree that -- that  
16 Mr. Weinstein referred to these in his report?

17 MR. HADDAD: We -- he did, Your Honor. Your Honor, he  
18 did -- he did -- he did refer to them in -- in his report. I  
19 mean, we -- we would agree --

20 THE COURT: Are they contending that these spec sheets  
21 are about your product?

22 MR. HADDAD: No. No, Your Honor.

23 THE COURT: So --

24 MR. HADDAD: Your Honor, we would agree to withdraw  
25 our objection to this if other Texas Instruments and Broadcom

1 spec sheets were permitted. I know there's -- we're --  
2 we're -- you know, if we -- if you withdrew your objections, as  
3 well.

4 MR. ALAVI: Your Honor, may I -- may I ask a question  
5 of counsel?

6 THE COURT: Yes.

7 MR. ALAVI: Mr. Haddad, is -- these are exhibits that  
8 are already on your -- on the Defendants' exhibit list?

9 MR. HADDAD: Yes.

10 MR. ALAVI: Okay. The Plaintiffs -- Plaintiffs are  
11 happy to have an agreement that both sides withdraw their  
12 objections to spec -- spec sheets for chipsets that are on  
13 either side's exhibits lists.

14 THE COURT: All right. Then --

15 MR. HADDAD: Fair enough.

16 THE COURT: -- that is understood then. We'll --  
17 you'll have to note which objections those are as we go through  
18 it, but I'll note that the objection is withdrawn.

19 And it looks like the next objection is to Exhibit 28?

20 MR. ALAVI: That's correct, Your Honor.

21 THE COURT: And what's the nature of that objection?

22 MR. ALAVI: This is a Bluetooth annual report from the  
23 Bluetooth SIG that lays out the Bluetooth SIG's communication  
24 to its membership, which includes Samsung, about trends in  
25 Bluetooth, the product map, what is upcoming in Bluetooth in

1 future releases.

2 THE COURT: And I see a variety of -- of categories of  
3 objection, Mr. Haddad. What is the primary objection to this  
4 document?

5 MR. HADDAD: Your Honor, it -- the objection is that  
6 it's just not relevant to the issues in -- in this case, and  
7 also that it -- it talks about -- there are revenue figures in  
8 here and -- and things that don't relate to Samsung that might  
9 be confusing.

10 THE COURT: Well --

11 MR. HADDAD: That would be confusing.

12 THE COURT: Is this -- this is a lengthy document, I  
13 take it? No?

14 MR. ALAVI: 20 pages, Your Honor.

15 THE COURT: Do you -- are you going to refer to the --  
16 the jury to the whole 20 pages, or what -- what are you seeking  
17 from this?

18 MR. ALAVI: No, Your Honor, we will not be referring  
19 to all 20 pages. One example would be on Page 4 of the  
20 document which Ms. -- Ms. Caswell can pull up.

21 This document talks about the value of EDR, which is  
22 the infringing product, and the importance to the industry and  
23 to Bluetooth in general. Both Dr. Morrow relies on this to  
24 discuss the importance of EDR, as does Mr. Weinstein. It's  
25 relevant to the hypothetical negotiation because it shows what

1 the parties would know about EDR, would have understood about  
2 EDR because it's a document that is produced by Samsung and  
3 would have informed the hypothetical negotiation as it goes to  
4 damages because it talks directly about the -- the value of --  
5 of the EDR component of Bluetooth that's at issue in this case.

6 THE COURT: Well --

7 MR. HADDAD: Your Honor, they -- what they want to  
8 rely on it for -- their experts want to rely on it for is -- is  
9 hearsay. Their experts can rely on hearsay, but -- but for the  
10 purpose of admitting this into evidence, they're -- they're  
11 relying on it for the truth of the matter asserted, and that's  
12 hearsay.

13 THE COURT: What is your objection -- your exception  
14 to the hearsay objection --

15 MR. ALAVI: Well, there's --

16 THE COURT: -- Mr. Alavi?

17 MR. ALAVI: There's -- there's two issues. One is  
18 putting aside whether it comes into evidence. Certainly the  
19 experts can rely on it. But with respect to hearsay, whether  
20 or not it's -- if you offer it not for the truth of the matter  
21 asserted, just that the statements were made, that Samsung  
22 received those statements, it informs the hypothetical  
23 negotiation that this is what Samsung, a member of the SIG, was  
24 hearing about the importance of this invention, and it informed  
25 what they would have believed the value of EDR is with respect

1 to the hypothetical negotiation.

2 So whether or not it's admitted for the truth of the  
3 matter asserted, if it's admitted with an instruction that it's  
4 not admitted for the truth, it is relevant to what Samsung's  
5 state of mind would have been during the hypothetical  
6 negotiation because these are documents that they would have  
7 relied upon.

8 And then finally, there is the residual exception to  
9 the hearsay rule. The -- this is a document from the Bluetooth  
10 SIGs which Samsung --

11 THE COURT: There's no way it's coming in under the  
12 residual exception. So the -- as far as the hypothetical  
13 negotiation, what is the agreed date of the hypothetical  
14 negotiation?

15 MR. HADDAD: October -- September 2011, Your Honor.

16 THE COURT: Okay.

17 MR. HADDAD: And this --

18 THE COURT: This is a 2004 --

19 MR. HADDAD: Yes.

20 THE COURT: -- document?

21 MR. ALAVI: And, Your Honor, I'd also point to 803.17  
22 which is market reports and similar commercial publications.  
23 This is from a trade group, the Bluetooth SIG, to which Samsung  
24 is a member. It's a communication to them about the value of  
25 Bluetooth SIG, data about it, and a roadmap on where they've

1 been and where they're going. It's exactly the type of  
2 communications from a trade group that someone in -- like  
3 Samsung would rely upon.

4 THE COURT: Show me the part of the report that you  
5 want to show to the jury.

6 MR. ALAVI: Can you pull up Page 4, Ms. Caswell?

7 We just need to switch the -- so Page 4 -- are you on  
8 Exhibit 20? Okay. Now, why don't you pull in this part right  
9 here? We're going to zoom in, Your Honor. There you go.

10 MR. HADDAD: Your Honor, this is not the type of  
11 publication that's like a market quotation, a list, a  
12 directory, compilation of data that's reliable. These are  
13 statements that were made -- they want to rely on these  
14 statements that were made in 2004 to inform something that  
15 happened in -- hypothetically happened in September 2011. And  
16 it's not -- 803.17 talks about market quotations and -- and the  
17 like. Not pros --

18 THE COURT: I'll sustain the hearsay objection. I --  
19 you can obviously have your expert testify -- informed by his  
20 research about trade publications, but Exhibit 28 will not be  
21 shown to the jury.

22 MR. ALAVI: Your -- Your Honor, on -- on that point, I  
23 understand the document's not exhibit -- is not admitted into  
24 evidence.

25 THE COURT: But you're saying can it be a

1 demonstrative?

2 MR. ALAVI: Yes.

3 THE COURT: No. I -- you -- you can't use over  
4 objection, hearsay documents as demonstratives. The difference  
5 between showing it to the jury on the screen up there as a  
6 demonstrative and showing it as an exhibit is so lost on the  
7 jury that -- you know, demonstratives are supposed to be merely  
8 items that illustrate the witness's testimony. This will be  
9 attributed to somebody other than the witness as a publication  
10 by this group in 2004, and that is a -- a hearsay use of it,  
11 so...

12 MR. ALAVI: Well, Your Honor, what I'm looking at is  
13 803.18, which -- which does not deal with the admissibility of  
14 exhibits, which is why we didn't bring it up, but deals with  
15 pamphlets and other periodicals and treatises that an expert  
16 relies upon. And if they call upon it in their direct, the  
17 document can be shown to the jury but not admitted into  
18 evidence.

19 THE COURT: The -- the learned treatise exception?

20 MR. ALAVI: And it applies to more than learned  
21 treatises. It applies to periodicals and pamphlets that an  
22 expert would normally rely on. This is the type of document  
23 because both Mr. -- Dr. Morrow and Mr. Weinstein rely upon it.  
24 This is certainly a publication from the industry group that  
25 discusses the invention at issue. It's certainly -- and the



1 value of the invention at issue. It's certainly the type of  
2 document that a damages expert would normally rely upon and a  
3 technical expert that talks about -- and Dr. Morrow does talk  
4 about the value EDR would rely upon.

5 THE COURT: And what is the statement within this  
6 document that you want to have read to the jury?

7 MR. ALAVI: It is the statement -- there's going to be  
8 multiple statements on this page that we're showing to the  
9 jury. But, for example, the discussion on Page 4 about the new  
10 features that are introduced in EDR and the bullets that follow  
11 that talk about what the new features of this EDR function  
12 are -- the first two bullet points. The section on backwards  
13 compatibility, which is on the sentence right before that.

14 This is a description from a trade group in a  
15 publication they put out about what Bluetooth EDR does, that  
16 it's backwards compatible, that it increases speed, that does  
17 these features. That's exactly what a technical expert would  
18 look -- look at, in addition to other things, to describe to  
19 the jury what EDR does and what its benefits are. And it's  
20 certainly what a damage expert would normally rely upon to  
21 discuss what the value of the invention is.

22 THE COURT: And that's fine. And this -- the way you  
23 would use this under 803.18 would be to draw your expert's  
24 attention to it on his direct and ask him what it says. And he  
25 can then read it to the jury if it -- if he has laid the proper

1 foundation that it's a reliable authority. It still will not  
2 be shown to the jury. It won't be put up on the screen. It's  
3 not -- he's simply entitled then to read whatever statement it  
4 is that he -- he wants from it.

5 MR. ALAVI: Okay. And my question for the Court is  
6 there's going to be several exhibits like this. Do you want us  
7 to raise our 803.18 purpose as we address these  
8 exhibit-by-exhibit, or deal with them at the -- at the trial  
9 and lay the predicate and then have them read it into evidence?

10 THE COURT: It won't be an exhibit. So we need to  
11 deal with the objection to the exhibit now, and this exhibit  
12 will not be received, but you can attempt to make use of it  
13 under 803.18, and it will be up to the trial judge at that time  
14 to rule on whether or not you've laid a foundation under --  
15 under that rule to have a particular passage read to the jury.

16 MR. ALAVI: Great, Your Honor. Thank you for that  
17 guidance. So we'll deal with 803.18 if they come up at trial.  
18 Thank you.

19 THE COURT: Okay.

20 MR. HADDAD: Your -- Your Honor, so at trial, they  
21 would have to establish that it's somehow reliable?

22 THE COURT: Yeah, their expert would have to testify  
23 that he regards statements within this as reliable, and that  
24 it's something that --

25 MR. HADDAD: Right.

1 THE COURT: -- that is a reliable authority. Yeah,  
2 and that's true of any learned treatise or other document that  
3 that you want to use that way. But it's still not an exhibit.

4 That takes us to No. 29?

5 MR. HADDAD: Yes, Your Honor.

6 THE COURT: What's the objection to 29?

7 MR. HADDAD: Your Honor, this -- very similar, it's --  
8 I mean, this is what appears to be a PowerPoint presentation.  
9 It's hearsay.

10 THE COURT: Okay. Hearsay objection?

11 MR. HADDAD: Yes, Your Honor, hearsay objection.

12 THE COURT: All right. What's the response to the  
13 hearsay objection?

14 MR. ALAVI: Your Honor, this is the same -- same  
15 argument you've just heard on 28.

16 THE COURT: It's an 803.18?

17 MR. ALAVI: That's right. This -- so -- and I -- I  
18 understand the Court's instructions not to get -- get into  
19 that. It's the same issue. This is something the experts have  
20 relied on from the Bluetooth SIG, and they'll be testifying  
21 about it. But it -- same arguments as to why it would fit into  
22 some of the hearsay object --

23 THE COURT: Is --

24 MR. ALAVI: -- exceptions.

25 THE COURT: Is this a publication of some sort or --

1 MR. ALAVI: It is published by the Bluetooth SIG, we  
2 believe, on their website.

3 THE COURT: Okay.

4 MR. HADDAD: I'm not sure, Your Honor. I mean --

5 MR. ALAVI: We'll have to lay the foundation with the  
6 testimony, Your Honor, and we understand that.

7 THE COURT: All right. Then I'll -- I'll sustain the  
8 objection to No. 29, as well.

9 MR. ALAVI: And, Your Honor, we withdraw -- Plaintiffs  
10 withdraw Exhibit 30.

11 THE COURT: All right. What's next?

12 MR. ALAVI: Your Honor, Exhibit 31 is a part of the  
13 Bluetooth specification.

14 THE COURT: What's the objection to it?

15 MR. HADDAD: Your Honor -- yeah, we're going to  
16 withdraw our objection here.

17 THE COURT: All right. What about 32?

18 MR. ALAVI: Your Honor, Plaintiffs withdraw Exhibit 32  
19 and Exhibit 33.

20 THE COURT: All right.

21 MR. ALAVI: And, Your Honor, for Exhibit 34, that's  
22 a -- a dictionary. We plan on using that as an 803.18 exhibit  
23 if the foundation is laid at trial.

24 THE COURT: Then -- all right. Do you still want to  
25 offer it as an exhibit to the jury, or are you just going to

1 have your expert read it if the foundation is laid?

2 MR. ALAVI: Your Honor, we're only going to offer it  
3 if there's no objection because I don't think I can overcome  
4 the objection given the Court's prior guidance.

5 THE COURT: All right. Is there an objection?

6 MR. HADDAD: Yes, hearsay, Your Honor, but...

7 THE COURT: All right. Then the hearsay objection is  
8 sustained to Exhibit 34.

9 What about 38?

10 MR. ALAVI: Your Honor, Exhibits 38, 39, and 40 are  
11 treatises, so, again, they're going to be offered under 803.18,  
12 unless -- unless Samsung has no objection to offering them into  
13 evidence.

14 MR. HADDAD: Same objection, Your Honor, hearsay.

15 THE COURT: All right. 38 through 40, the objection  
16 is sustained.

17 What about 41?

18 MR. ALAVI: We withdraw 41, Your Honor, and we  
19 withdraw Exhibit 47, as -- as well, Your Honor.

20 THE COURT: All right.

21 MR. ALAVI: So that gets us to Exhibit 57, I believe,  
22 is the next exhibit with an objection.

23 THE COURT: What's the objection to 57?

24 MR. HADDAD: One moment, Your Honor. Your Honor,  
25 we -- we withdraw our objection to 57.

1 THE COURT: 58?

2 MR. HADDAD: We withdraw 58, Your Honor.

3 THE COURT: All right. Objection to 58 is withdrawn.

4 59?

5 MR. HADDAD: We -- we have no objection, Your Honor,  
6 to 59. Withdrawn.

7 THE COURT: All right. 60?

8 MR. HADDAD: Your Honor --

9 THE COURT: Do you need some more time to go over  
10 these?

11 MR. HADDAD: No, this one -- this one, Your Honor,  
12 we'll withdraw.

13 THE COURT: You know, given that there are 50 pages of  
14 this, what I'd like for y'all to do -- if the two of you could  
15 just sit down for a few minutes and see how many of these you  
16 can sort out. I -- what I'd like to do is be able to rule on  
17 the ones to which there are live objections.

18 And I've got other stuff I can do, so it won't bother  
19 me a bit for y'all to take some time and see if you can work  
20 out what you want to do on this, and let me know when you're  
21 ready, and I'll come back. And if you come up with a series of  
22 objections that you want rulings on to guide others, I'm happy  
23 to do that, too, but I feel like right now I am more than  
24 anything else interfering with your ability to communicate  
25 about these and maybe knock them out. So we're going to take a

1 recess to give you time to do that and come back as needed.

2 LAW CLERK: All rise.

3 (Recess.)

4 LAW CLERK: All rise.

5 THE COURT: Please be seated.

6 Mr. Ward, where do we stand?

7 MR. WARD: Well, we went through both exhibit lists  
8 and are ready to announce where we are on those lists, and  
9 there's some rulings that need to be ruled on by the Court.

10 THE COURT: All right. Why don't we just go to the  
11 objections that require rulings and do those. And have you  
12 marked up a copy of one of the lists that indicates which  
13 exhibits are withdrawn and which objections are withdrawn?

14 MR. ALAVI: Your Honor, it's --

15 THE COURT: Mr. Alavi.

16 MR. ALAVI: -- it was fairly complicated, so I think  
17 on what we were able to do was we -- we took copious notes, and  
18 we are going to prepare a -- a list for the Court of  
19 pre-admitted exhibits that comply with those notes, but we  
20 don't have a clean copy because there was a lot of commentary  
21 back and forth. What we do have is I think we know which  
22 object -- which exhibits are objected to, and I think it's  
23 something like a handful, six or seven on the Plaintiff's list,  
24 and maybe a handful or more, six or seven on the Defendants'  
25 list. And we can identify essentially which objection -- which

1 exhibits are objected to for the Court pretty easily.

2 THE COURT: And how can I have assurance that -- that  
3 you are both in agreement on what your agreements are? You  
4 don't have a single document that reflects those?

5 MR. ALAVI: My -- my plan, Your Honor, is until you  
6 kick us out of here, to go through an exhibit list with  
7 opposing counsel and basically get it done tonight. That  
8 way -- and -- and we don't want the Court to wait on us, but  
9 we -- exactly for that reason, I think we need to -- the  
10 parties need to sit down and go through a clean exhibit list  
11 and make sure that they go through their notes, and we have  
12 full agreement.

13 I think we had four or people taking notes. We went  
14 over it a couple of times, so I think we're in fairly good  
15 shape. There's always the chance of a mistake, but I would  
16 propose that at least counsel doesn't sleep until they -- they  
17 have that agreed to list for the Court.

18 THE COURT: All right. Ms. Higgins, you were going to  
19 speak for the Defendant, I believe?

20 MS. HIGGINS: In terms of the objections to exhibits,  
21 Your Honor, my colleague, Ms. Hermes, is going to address  
22 those.

23 THE COURT: Okay. I'm sorry, I'm misinterpreted your  
24 rising.

25 MS. HIGGINS: That's okay. I was just going to offer



1 some assistance over there to my esteemed opposing counsel.

2 THE COURT: All right. Well, is there agreement on  
3 the process that Mr. Alavi just outlined?

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: Okay. Then let's move to the objections  
6 to the exhibits.

7 MR. ALAVI: Your Honor, I think the -- the first  
8 exhibit issue is fairly simple. An example of it is Exhibit  
9 64, but whatever the Court rules on this will impact every  
10 other exhibit. The parties have agreed that certain exhibits  
11 need to be redacted pursuant to various rulings, whether it be  
12 a motion in limine or some other ruling. And the parties agree  
13 that when it's redacted, there should be some notation on the  
14 redaction that says redacted. The parties want the Court's  
15 guidance. I think Samsung has suggested that the redactions  
16 say redacted by Court order.

17 It's the Plaintiff's preference to put redacted, and  
18 then have the Court instruct the jury that sometimes you'll see  
19 documents that are redacted for various reasons. That's  
20 information that the jury should not see or cannot see, as  
21 opposed to interject the Court into the exhibit and suggest  
22 that the Court is keeping a document or keeping information  
23 from the jury. But quite frankly, whatever the Court wants to  
24 do, we're fine with.

25 THE COURT: So your proposal on the Plaintiff's side

1 would be that it just say redacted?

2 MR. ALAVI: Yes, Your Honor, with some type of  
3 instruction either when you read the stipulation or at  
4 beginning of trial, there will be documents that are sometimes  
5 redacted. That is just information that for various reasons  
6 members of the jury or members of the public are not allowed to  
7 see, as opposed to suggesting that the Court has ruled in favor  
8 of one party or the other by redacting a document and putting  
9 redacted by Court order on the document.

10 THE COURT: And what is your concern about the  
11 prejudice from it saying whether the Court did it or not?

12 MR. ALAVI: Well, if you're the party introducing the  
13 exhibit, it suggests that maybe you did something wrong or --  
14 or the Court ruled against you, which generally we don't like  
15 to have -- as a party, have the jury hear or understand.

16 MS. HIGGINS: And, Your Honor, if I may, I think the  
17 concern we have by not having it say redacted Court order is  
18 that even with an instruction, it invites the jury to speculate  
19 about why it is they're seeing a document that's redacted and  
20 who all redacted it. And so we think it would be better if  
21 they just all consistently said redacted by -- by Court order.

22 THE COURT: All right. It will be sufficient for the  
23 document to say redacted, and Judge Gilstrap will advise the  
24 jury that they should not read anything into the redaction of  
25 the exhibits.

1 MR. ALAVI: Your Honor, the next exhibit -- and it's a  
2 cluster, but they are a little bit different, are Exhibits 95  
3 and 98. And if I may, I will go to the podium to talk about  
4 these a little bit.

5 And Ms. Caswell will put up -- put up the documents.  
6 We can start with Exhibit 95. Which one do I push, the right  
7 table?

8 So this is a hearsay objection, Your Honor.  
9 Exhibit 95 is a J.D. Power report, and I think it's important  
10 for me to give you the context of this report, but let me tell  
11 you why we think it doesn't come in. It comes in over a  
12 hearsay objection.

13 The first is under 803.17. This is a -- a -- this is  
14 a -- I'll get the rule real quick. This is exactly what 803.17  
15 was intended to cover, which is market reports. J.D. Powers is  
16 a market company. But what's more important about this  
17 particular exhibit is that it is not created solely by J.D.  
18 Power. J.D. Power creates these documents and then Samsung  
19 goes to J.D. Power and has it custom made for Samsung's  
20 internal use. And I have the deposition of Mr. Bremer --  
21 Brenner who was the corporate rep on these marketing documents,  
22 and he testified, and I have the pages here for the Court to  
23 see. On Page 24 --

24 THE COURT: Show me the part of the document that you  
25 want the jury to consider.

1 MR. ALAVI: Ms. Caswell, would you scroll through?

2 So what you'll see is -- keep going, keep going, keep  
3 going. Here, let me -- I need to get a little closer because  
4 my eyesight is not that good.

5 So there's several parts of the report and -- that are  
6 relied on by the experts. For example, parts of the report  
7 that talk about battery performance being an important feature.  
8 So that's at the top under performance. And Mr. Bremer  
9 testified about this when he was -- he was given the document  
10 and testified, yes, these are marketing surveys that we get,  
11 and battery performance is consistently an issue that we see  
12 with consumers. It's something that they're -- find important,  
13 and we design products to try to take care of batter  
14 performance. So that part -- and it carries over -- oops --  
15 several pages. Let me find the rest.

16 So, for example, there's this gap analysis that's done  
17 where Samsung is commissioning J.D. Power to see how they do  
18 against their competitors on different features, including  
19 battery performance.

20 And then we show -- we're going to use these parts of  
21 the report that talk about what does Samsung -- when they talk  
22 to J.D. Power and they find out what features of a smartphone  
23 are important, you see the features and some of those things,  
24 for example, are battery performance. So this is used -- at  
25 least this report, Your Honor, to show that Samsung commissions

1 a report. It's a market report that they use, and people in  
2 the industry use. It's commissioned by them to find out what  
3 consumers find to be important. And battery performance -- and  
4 it -- it's so small, I'm not even sure if that one has the  
5 battery performance on it, but it's throughout, is one of  
6 the features that marketing companies who are hired by Samsung  
7 to produce reports for them find to be an important feature.  
8 So --

9 THE COURT: What -- what evidence do you have that  
10 this was commissioned by Samsung?

11 MR. ALAVI: So Page 24 of Timothy Benner's report who  
12 is the corporate rep designated on this topic. Question on  
13 Page 21: So then let me take a step back. This is a report  
14 that J.D. Power condensed and tailored for Samsung, correct?  
15 To -- question: To present Samsung?

16 Answer: That is correct.

17 And in the testimony before that on Page 23, when I  
18 asked him did J.D. Power prepare this report, he said: Well,  
19 J.D. Power prepares generic reports, and then they also prepare  
20 custom tailored reports where they go -- when you order a  
21 report, they will go get their data and custom tailor it per  
22 your order. And that's on Page 22 and 23 of his deposition.

23 THE COURT: Now, there's a difference between J.D.  
24 Powers only presenting the requested parts of their data to  
25 somebody and J.D. Powers going out and gathering data at the

1 request of somebody -- in this case, Samsung.

2 MR. ALAVI: That's correct, Your Honor.

3 THE COURT: Do you have evidence that Samsung directed  
4 J.D. Powers to go out and gather this evidence for Samsung?

5 MR. ALAVI: No, Your Honor. That's not the position  
6 we're taking. This is a -- this is a market report that was  
7 originally -- the information was gathered by J.D. Power for  
8 the industry as a whole, and then this report -- that  
9 information was tailored for Samsung to address Samsung's  
10 request. And that's exactly what 803.17 deals with, market  
11 reports and similar commercial publications. That is -- and  
12 Samsung's testimony, their corporate rep is, they, in fact, use  
13 this report. On Page 25 of his testim -- of his deposition,  
14 Mr. Benner testified that this report was actually used by the  
15 product team to decide what to develop and what was important  
16 to put into their products.

17 So we think it's admissible under 803.17. Even if you  
18 find it doesn't meet the hearsay exception, it is certainly  
19 relevant if not offered for the truth of the matter. It's at  
20 least relevant to the hypothetical negotiation because it shows  
21 what Samsung, one participant of the hypothetical negotiation  
22 at the time, thought was relevant, including battery  
23 performance. And, therefore, if there's an invention that  
24 improves battery performance, they would be interested in  
25 paying to license that patent because it's important to them.

1 THE COURT: All right. Let me hear from the  
2 Defendant.

3 MS. HERMES: So Samsung -- Rebecca Hermes on behalf of  
4 Samsung.

5 Samsung does object to both Plaintiff's Trial Exhibits  
6 95 and 98 as hearsay. These are prepared entirely by J.D.  
7 Power. I'm going to refer to the deposition of Timothy J.  
8 Benner at Page 23 where he testified that they collect it in a  
9 way that we don't influence. They're a third party. They're  
10 completely anonymous. I think that's a -- a sic from us, and  
11 that's part of what they need to maintain that anonymity  
12 because they do give awards in terms of the top customer  
13 satisfaction and things like that.

14 On Page 25, he said, there's parts of it that are  
15 good, parts that are bad. Pretty much any syndicated report is  
16 that. It's kind of -- there are some things that we would  
17 agree with and certain things we don't agree with.

18 And so I don't believe it falls under the hearsay  
19 except -- exception cited by opposing counsel in that -- if I  
20 can just -- 803.17 seems to refer to market quotations, lists,  
21 and directories. And so that sounds more like sort of stock  
22 sort of material and less this sort of analyst information.

23 THE COURT: Well, do you dispute that Samsung relies  
24 upon this sort of report?

25 MS. HERMES: Samsung certainly hires J.D. Power to

1 come in and present the J.D. Power results, but I don't know  
2 that the testimony goes to the fact that Samsung relies on this  
3 in making any decisions about its products. They take it in,  
4 like I'm sure they take in a lot of information in the  
5 industry.

6 THE COURT: Why wouldn't this be something that would  
7 be fair game for the hypothetical negotiation?

8 MS. HERMES: So I was just hoping we could pull up the  
9 document and -- and check the date on that. If we could get  
10 Plaintiff's Exhibit 95?

11 MS. HIGGINS: Can we move it to the front page?

12 MR. ALAVI: Yeah, we're getting to the front page.

13 MS. HERMES: Does the exhibit --

14 THE COURT: The date of June of 2013.

15 MS. HERMES: So that would be two years after the  
16 hypothetical negotiation.

17 THE COURT: What's the date of the data that they're  
18 relying on?

19 MS. HERMES: I assume it's from -- so we haven't had a  
20 chance to depose J.D. Power on -- on the data in this report.  
21 But we assume it's -- it's recent to the -- the reports are  
22 generally done fairly -- fairly close together.

23 THE COURT: And this was a document produced by  
24 Samsung --

25 MS. HERMES: Correct.



1 THE COURT: -- from its files? I will overrule the  
2 hearsay objection.

3 MR. ALAVI: Your Honor, I think Exhibit 78 is a  
4 similar exhibit. It's a -- it's another report that Mr. Benner  
5 testified was a syndicated report on Page 78.

6 THE COURT: What I just looked at is Exhibit 95. Was  
7 there another exhibit number close to that that was at issue on  
8 this, too, or --

9 MR. ALAVI: Yes, Your Honor. It's Exhibit 98.

10 THE COURT: And, Ms. Hermes, do you agree that that  
11 would be subject to the same ruling?

12 MS. HERMES: I'll note that it appears to be 2014,  
13 which is two years later, but other than that, it would -- the  
14 arguments would be the same.

15 MR. ALAVI: And as the Court's aware, the book of  
16 wisdom allows as part of the hypothetical negotiation, assumes  
17 that the parties have the forward looking information.

18 THE COURT: All right.

19 MR. ALAVI: The hypothetical negotiation is in 2011.

20 THE COURT: I'll overrule the objection as to 98, as  
21 well.

22 What's the next one?

23 MR. ALAVI: Your Honor, the next exhibit is  
24 Exhibit 159, and Mr. Enger will be arguing that exhibit.

25 MR. ENGER: Your Honor, this exhibit -- Plaintiff's

1 Exhibit 159 is a document that was set forth by the working  
2 group of the 802.11 standards body. This was -- it sets forth  
3 their procedures. It's from 1994, and it explains exactly who  
4 they're able to distribute drafts of the 802.11 specification  
5 to. I think it's the last page, Page 5.

6 THE COURT: Does this have to do with whether or not  
7 it's publicly available?

8 MR. ENGER: Yes, Your Honor. If you see what's been  
9 blown up, it says that -- this explains who the documents can  
10 be distributed to.

11 THE COURT: All right. Let -- let me hear from the  
12 Defendants as to the objection to this.

13 MR. HADDAD: Your Honor, this was a -- a deposition  
14 exhibit at the deposition of Mr. O'Hara, and when it was  
15 presented to him, he respond -- I don't have the testimony in  
16 front of me right now, but he responded something to the effect  
17 of he didn't know whether this was ever adopted by the IEEE  
18 802.11 working group. So there's -- there's no testimony  
19 that -- that even -- would get this in.

20 THE COURT: Document -- just the little part I'm  
21 looking at here, certainly looks like it was adopted. It's got  
22 a revision date on it.

23 MR. HADDAD: Well, the testimony -- the testimony  
24 that's in the record, and I'll -- I guess I'll pull it up. And  
25 I don't think -- I don't think Plaintiffs dispute that he said

1 that he -- he didn't know that it -- whether it was ever  
2 adopted.

3 THE COURT: Well, the witness may or may not have  
4 known it, but is there -- is there some indication on the  
5 document itself?

6 MR. HADDAD: As to whether it was adopted?

7 THE COURT: As to whether it's considered by the IEEE  
8 to be in force?

9 MR. HADDAD: I don't think there's anything in here  
10 that says whether it is in force --

11 THE COURT: All right.

12 MR. HADDAD: -- Your Honor.

13 THE COURT: Well, then let me hear -- Mr. Enger,  
14 what's the response to that?

15 MR. ENGER: The response is that our witness,  
16 Mr. Kerry, will be able to prove up this document. He'll --  
17 he'll give convincing testimony. I -- I anticipate that this  
18 document was, indeed, in fact, and it was indeed adopted as the  
19 working group's procedures in 1994 that extended all the way up  
20 until 1996/97 time frame whenever the draft WiFi standard was  
21 at issue.

22 THE COURT: Has Mr. Kerry been deposed?

23 MR. ENGER: No, Your Honor. We've offered several  
24 dates, and none have been accepted, Your Honor.

25 THE COURT: All right.

1 MR. ENGER: In all fairness, there was a death in his  
2 family that required him not to be able to do it until very  
3 recently, but -- but that -- that -- notwithstanding, he has  
4 not been deposed.

5 THE COURT: Mr. -- Mr. Haddad, why shouldn't I say  
6 that -- that they can admit this if they lay a foundation  
7 through Mr. Kerry?

8 MR. HADDAD: If they can lay a foundation, Your Honor,  
9 then -- then there'd be no objection, but as it stands now,  
10 there -- there's no evidence. In fact, the -- the testimony  
11 that we have in the record is that it's not reliable, and it  
12 was never admitted -- not admitted. It was never approved.

13 THE COURT: And what -- what evidence is there in the  
14 record that it was never approved?

15 MR. HADDAD: Mr. O'Hara testified that he didn't know  
16 whether -- whether it was ever approved, and his deposition was  
17 taken.

18 THE COURT: How is he doesn't know the same as it was  
19 never approved?

20 MR. HADDAD: Well -- well, it's not the same. It's  
21 just that the testimony from Mr. O'Hara is that it was -- it  
22 was -- any -- there is no testimony that it was approved, and  
23 any testimony that is in the record is that he has no idea  
24 whether it was.

25 THE COURT: All right. I'll allow this to remain on

1 the list, No. 159, but I'll direct that it not be used in any  
2 manner until Mr. Kerry has laid a foundation.

3 What's next?

4 MR. ALAVI: Your Honor, the next exhibit is  
5 Exhibit 245, which is a patent, and Mr. Enger will argue that.

6 THE COURT: All right. Let me hear the objection to  
7 it.

8 MR. HADDAD: Your Honor, Plaintiffs are offering this  
9 patent to prove the matter asserted. They have a -- their --  
10 they have an expert report. Their expert, Dr. Mr. Akl, relied  
11 on this to prove --

12 THE COURT: So hearsay is the objection?

13 MR. HADDAD: Hearsay is the objection, Your Honor.  
14 I'm sorry.

15 THE COURT: Okay.

16 MR. HADDAD: It's been a long day.

17 THE COURT: All right. What's your response to that,  
18 Mr. Enger?

19 MR. ENGER: The response is that our expert will not  
20 be relying on this patent for the -- the truth of the matter  
21 asserted, but rather just to simply show that occasionally  
22 people represent wireless networks with lines. That -- that's  
23 the extent of it. He's not going to be addressing the -- the  
24 substance of this technology and -- and trying to offer  
25 opinions on how it works.

1 THE COURT: So this is just about the issue of whether  
2 or not a line on a diagram can be a wireless network -- a  
3 wireless communication line?

4 MR. ENGER: That's all our expert has offered this --  
5 this patent for.

6 MR. HADDAD: But -- but, Your Honor, he's offering it  
7 for the truth of the matter that -- that's asserted there --

8 THE COURT: I mean --

9 MR. HADDAD: -- that indeed a -- a wireless system can  
10 be represented by a -- by a line. In fact --

11 THE COURT: I -- I can't imagine that that's in doubt.  
12 I think clearly there are diagrams that -- that use lines for  
13 wireless communication lines.

14 Is there -- do you have an expert, Mr. Haddad, who is  
15 going to testify that a line on a diagram cannot represent a  
16 wireless communication line?

17 MR. HADDAD: I -- we do not have a -- an expert who's  
18 going to testify to that, Your Honor.

19 THE COURT: That does not surprise me.

20 MR. HADDAD: What we're -- my only point is that the  
21 way they're using this document is to -- is for the truth of  
22 the matter asserted in the document.

23 THE COURT: Okay. I understand the objection. It's  
24 overruled.

25 MR. ALAVI: Your Honor, the next exhibit is

1 Exhibit 346, and this may be one where we can -- if we can get  
2 some guidance a bit.

3 Let me give the -- the Court the background.  
4 Exhibit 346 is an exhibit to Mr. Weinstein's supplemental  
5 report. The supplemental report deals with the BlackBerry  
6 license. And what he did is he was able to -- because he had a  
7 chart that he had done for his BlackBerry expert report, that  
8 BlackBerry gave Rembrandt permission to use, because the  
9 protective order in this case prohibits the Plaintiffs from  
10 using BlackBerry confidential information in any way in the  
11 Samsung case.

12 So he got permission to use that -- that exhibit he  
13 had done in order to calculate the number of units that were  
14 settled in the BlackBerry settlement agreement to calculate a  
15 per unit royalty.

16 There is a hearsay objection, and I understand the  
17 hearsay objection. It is a -- I think a compilation of data.  
18 But quite frankly, we're offering it -- but we can also live  
19 with being able to show the jury, and that's why I need some  
20 guidance. My understanding is if it's not admitted, the Court  
21 does not allow the -- the -- a party to show, for example, an  
22 expert's exhibit that he's done calculating information.

23 So our original preference is to admit it. It's a  
24 compilation. It involves BlackBerry units. It's calculated  
25 through the date of the settlement. It's the basis by which he

1 then takes the settlement amount in the BlackBerry license,  
2 which is a backwards look -- looking only license and  
3 calculates a per unit royalty. And I think there's a hearsay  
4 objection lodged.

5 THE COURT: All right. Let me hear the hearsay  
6 objection.

7 MS. HIGGINS: So, Your Honor, in terms of the hearsay  
8 objection, the -- it is hearsay. They're offering it for the  
9 truth of the matter asserted. One of the things that we  
10 have going on here, Your Honor, is that you will hear from  
11 counsel with respect to other BlackBerry exhibits, that  
12 information relating to the units sold should come in, but yet  
13 Mr. Weinstein in this case did a report where he analyzed  
14 BlackBerry -- BlackBerry's units, BlackBerry's chip price,  
15 and in connection with that, they would like to allow this  
16 hearsay document in, but then preclude other documents, such as  
17 other information from Mr. Weinstein's report, which put this  
18 in context.

19 And -- and so we believe the document is hearsay.  
20 It's not a compilation because we -- we don't have the -- the  
21 underlying document from which this was created. And so we  
22 think it's hearsay. And if Your Honor is going to let it in,  
23 we think the -- the other related documents that have to do  
24 with BlackBerry that put this whole agreement in context should  
25 also be able to come in so that we can cross-examine



1 Mr. Weinstein with them.

2 THE COURT: All right. You're -- do you contend that  
3 Mr. Weinstein is not able to rely upon this number, for  
4 whatever it's worth, in his testimony?

5 MS. HIGGINS: It -- it is hearsay, and there's a  
6 difference between him relying on it and -- and -- and this  
7 exhibit coming into evidence, Your Honor, and --

8 THE COURT: That's what I'm asking about. Is -- is --  
9 is your objection only to the introduction of 346 as an exhibit  
10 to the jury, or is it to his reliance upon the numbers revealed  
11 in there for his opinions?

12 MS. HIGGINS: He may rely on it, but we also had other  
13 objections to this exhibit, as well. It is prejudicial,  
14 especially if Samsung is not allowed to put -- put these units  
15 in context of the report. So this -- this is an exhibit that  
16 was --

17 THE COURT: Well, let me --

18 MS. HIGGINS: -- prepared for another report.

19 THE COURT: Let me just hear from the Plaintiff on --  
20 on the hearsay objection, because I would agree with you, this  
21 appears to me to be hearsay, and so I -- I need to hear what  
22 their response to that is. And it may not be necessary for you  
23 to get to your other objections.

24 MR. ALAVI: So, Your Honor, I think the answer to the  
25 hearsay objection is twofold. The first is -- and the

1 testimony -- there's actually emails to this effect that are  
2 on -- that are going to be admitted is that during the  
3 negotiations, Mr. Weinstein was asked by Rembrandt and  
4 calculated the number of units that BlackBerry sold.

5 And so what Mr. Weinstein testifies is based on the  
6 date that the settlement was reached and the fact that  
7 Rembrandt was using his calculations to figure out how many  
8 units were sold, he was able to extrapolate the number of  
9 units. So it doesn't have to be offered for the truth of the  
10 matter asserted. It is an exhibit that is a calculation that  
11 he performed and provided to the Plaintiff in this case when  
12 the Plaintiff was negotiating the amount of the settlement.

13 So no one is suggesting, for example, that, you know,  
14 maybe -- maybe BlackBerry gave us the wrong numbers in  
15 discovery. We don't have to introduce the numbers for the  
16 truth of the matter asserted. It is a document that the  
17 Plaintiff relied upon in coming up with the settlement number,  
18 and that's how he calculates the per royalty unit. So it's not  
19 hearsay in the classic sense because it's not offered for the  
20 truth of the matter asserted.

21 THE COURT: I'm going to sustain the objection to 346.  
22 You -- it may be relied upon as a basis for a calculation, but  
23 unless the door is opened on cross-examination, it will not be  
24 admitted.

25 What's next?

1 MR. ALAVI: The next exhibit, Your Honor, is 854, and  
2 Mr. Enger will take that argument.

3 MR. ENGER: Your Honor, this is a paper co-authored by  
4 Defendants' validity expert and non-infringement expert,  
5 Dr. Goodman. You can see his name right there in the title.  
6 This -- this is not hearsay because it's not being offered for  
7 the truth of the matter asserted. It's not being offered to  
8 show that any particular statement within this document is  
9 actually true. Rather, I believe it's on the second or the  
10 third page, there's a -- a statement that he wrote -- further,  
11 please, maybe one more. It could be in here.

12 But -- but the -- the point, Your Honor, is that he  
13 used the word "indicate" very differently than his opinions at  
14 trial. And -- and so we're offering it not to show that --

15 THE COURT: That's fine. Let me hear about the  
16 objection.

17 MR. HADDAD: Your Honor, this -- this -- this is  
18 hearsay. They're -- they're offering it to prove the fact  
19 that the -- the word "indication," used by the author, who's  
20 our expert, used it differently. And they're offering it for  
21 that -- that particular purpose -- purpose. If they want to --  
22 they want to introduce this into evidence -- if they want to  
23 use this on cross, this is exactly what cross is for. You said  
24 something and in something else you wrote, and they can cross  
25 him on it. But to put this in evidence means that they've --

1 that -- that --

2 THE COURT: Is there something in the document that  
3 you think has some harmful relevance, other than the use that  
4 they want to put it to? I mean, are -- are we really worried  
5 about anything here?

6 MR. HADDAD: Well, we don't -- we think it is hearsay,  
7 Your Honor. They're offering it to prove that the word means  
8 something else.

9 THE COURT: They're offering it to prove that -- that  
10 your expert used it in a way that's contrary to the way he's  
11 going to tell the jury about; is that right?

12 MR. HADDAD: As an out-of-court statement offering to  
13 prove it here in court, they're -- that's what they're trying  
14 to do. And they can use it on cross if they want.

15 THE COURT: I think this is classic that it's the fact  
16 that the statement was made that it's being offered for, not  
17 whether that out-of-court statement's true, but that this  
18 witness has previously said something different.

19 Now, I agree with you that it ought to be used on  
20 cross-examination, but is there -- Mr. Enger, is this -- do you  
21 intend to use this in anything other than the cross-examination  
22 of the witness?

23 MR. ENGER: No, Your Honor.

24 THE COURT: All right. Well, with that understanding,  
25 I'll overrule the objection, but -- because I don't think it's

1 a valid hearsay objection.

2 That's 854. All right.

3 MR. ALAVI: Your Honor, the next set of -- of  
4 exhibits, it's a cluster of exhibits. I think they're also  
5 closely related, we can deal with them as a cluster, are  
6 Exhibits 883 and -- through 887.

7 And, Your Honor, this is complicated enough, that if I  
8 may, I can give the Court a little bit of background.

9 Dr. Becker is the Defendants' damages expert. His --  
10 these are -- these are pleadings from a case, as the Court was  
11 able to tell just by looking at the first exhibit.

12 THE COURT: It's like a docket sheet.

13 MR. ALAVI: The first one is a docket sheet, and there  
14 are various pleadings.

15 Dr. Becker, his primary opinion in the case is that  
16 there is a license agreement that was reached in the settlement  
17 between Bandspeed and Samsung that deals with a different  
18 patent and a different part of Bluetooth that is the most  
19 appropriate license to use as a comparable license. And he  
20 comes up with some opinions as to what the number is.

21 When I deposed -- and he -- he gives litigation  
22 discounts, and he purports to know what type of litigation  
23 discount you should give in order to come up with a number.

24 When I deposed him, I brought various docket sheets,  
25 pleadings that were in the Bandspeed matter that are relevant

1 to part of his testimony, which is whether or not he gave the  
2 appropriate litigation discount in trying to treat this as a  
3 comparable license, putting aside it's a different technology,  
4 a different patent.

5 And he testified that he had made no investigation  
6 whatsoever into the Bandspeed litigation when applying  
7 litigation discounts to then decide out of his head when he  
8 pulled it out how all the factors should lead to a lump-sum  
9 license. So I went through various pleadings with him in the  
10 Bandspeed case, including the fact that in the Bandspeed case,  
11 the Defendants all took the position that Bandspeed, because it  
12 was a member of the Bluetooth SIG, had already given everyone a  
13 license for free -- to go through with him the type of work he  
14 should have done in order to actually give a credible opinion  
15 that the Bandspeed license, with all the litigation discounts  
16 and other things that he applied, should have been the basis  
17 for a comparable license.

18 THE COURT: All right.

19 MR. ALAVI: These are being admitted for that purpose.

20 THE COURT: Let me just interrupt you now and hear  
21 about the objections to this.

22 Ms. Hermes, do you object to all of these?

23 MS. HERMES: Yes, Your Honor, we object to these on  
24 the basis of hearsay, relevance, and that they're prejudicial.

25 THE COURT: How can there be a relevance objection

1 if -- if your expert's relying upon the license from this case?

2 MS. HERMES: Well, I will note that four of the  
3 documents relate to the docket sheets and a summary judgment  
4 motion from the case for other Defendants and a motion that was  
5 brought two years after Samsung settled the case, and so we  
6 don't see how that has any relevance to -- I mean, I'll note  
7 there's one -- so that if you look at --

8 THE COURT: Move on. Then tell me which of the  
9 documents you think are irrelevant on that ground.

10 MS. HERMES: So that would be PX 883, which is a  
11 docket sheet for Bandspeed versus Acer. It's a different  
12 Defendant. PX 884 is a docket sheet for Bandspeed versus  
13 Garmin. 885 is an amended complaint for Bandspeed. That would  
14 be amended complaint as to all of the Defendants, but --

15 Mr. Gregov, if we could pull up PX 885? If you could  
16 just get the date off that document.

17 MR. ALAVI: Ms. Caswell will pull it up for you. I  
18 think it's --

19 MS. HERMES: Oh.

20 MR. ALAVI: -- switched to ours.

21 MS. HERMES: If we can get the date on that one.

22 THE COURT: January of 2011.

23 MS. HERMES: So that -- so that would include Samsung.  
24 So that would not -- that would -- we would take that out, as  
25 well as the affirmative answer in terms of this particular

1 aspect of the injection.

2 And then the Toshiba Corporation motion for summary  
3 judgment on the patents, that was two years after Samsung  
4 settled out of the litigation.

5 THE COURT: All right. Besides relevance, what are  
6 your other objections?

7 MS. HERMES: That it's prejudicial because it's  
8 confusing to the jury. There are obviously defenses --

9 THE COURT: What else?

10 MS. HERMES: And then hearsay.

11 THE COURT: Okay. Thank you.

12 Mr. Alavi, what is your response, first off, to the  
13 relevance objection that some of these post date the settlement  
14 by Samsung?

15 MR. ALAVI: Well, I think the only thing that post  
16 dates is the summary judgment motion, and I'll -- because the  
17 two docket sheets -- this was a consolidated case that was  
18 ultimately transferred, so that's why the two docket sheets are  
19 in there. They're -- they include Samsung.

20 THE COURT: All right.

21 MR. ALAVI: So we can't get into the attorney-client  
22 communication that Samsung had with its own counsel, but what  
23 we do have is their answer where they raised the license  
24 defense.

25 THE COURT: I'm talking about the motion for summary



1 judgment.

2 MR. ALAVI: That's right, Your Honor. And this motion  
3 for summary judgment was the motion that was filed by the  
4 remaining Defendants in the defense group, the joint defense  
5 group after all the other Defendants had settled on the very  
6 defense that Samsung raised in its affirmative defenses in the  
7 case which was license. And the issue, though, is Mr. Becker  
8 at least has an obligation if he says apply, some kind of  
9 litigation discount, to try to investigate the merits of the  
10 case. We're not going to get into all these details, but I  
11 think we're entitled --

12 THE COURT: I'll sustain the objection to 887 because  
13 I don't care what the other Defendants asserted years after  
14 Samsung settled out.

15 And I'll overrule the objections to 883 through 886.  
16 I believe that they are relevant, and they're not offered for a  
17 hearsay use.

18 What's next?

19 MR. ALAVI: Your Honor, the next exhibit is, I think,  
20 the last one, but I will double-check, is Exhibit 913. And  
21 this is a -- an internal Samsung marketing report that deals  
22 with battery life on notebook computers. And I think the  
23 objection is hearsay. I can give you a little bit of  
24 information to --

25 THE COURT: What's your response to a hearsay

1 objection?

2 MR. ALAVI: It's Samsung's own internal document.  
3 They produced it. NAHQ is Samsung's own entity that produces  
4 marketing reports for Samsung.

5 THE COURT: All right.

6 MR. ALAVI: So it's a party admission.

7 THE COURT: Thank you.

8 MS. HERMES: Our objection is that this has not been  
9 used with any Samsung witness in the case, so it's hearsay.  
10 And that they haven't proved it up to be any kind of a business  
11 record.

12 THE COURT: How would whether it's been used with a  
13 Samsung witness have anything to do with whether it's hearsay?

14 MS. HERMES: So the -- the document itself contains  
15 hearsay within hearsay. So it's Samsung's marketing research,  
16 and so it's the marketing people going out and -- and bringing  
17 back information that itself would be hearsay.

18 THE COURT: Okay. I'll overrule the objection to 913.

19 MR. ALAVI: Your Honor, if you give me -- may I have  
20 30 seconds just to make sure I didn't miss anything?

21 THE COURT: All right.

22 MR. ALAVI: We did cover all the objections.

23 I did want to ask the Court's guidance on one issue,  
24 and I think it will appear in both exhibits. There are certain  
25 clusters of exhibits that the parties acknowledge are out

1 because of the motion in limine. So we're leaving them on our  
2 witness list, but with the idea that if someone opens the door,  
3 they're on the exhibit list.

4 We assume the Court did not want to deal with specific  
5 objections to those, but if we're wrong, we can go back and  
6 work our way through those.

7 THE COURT: They -- they should not be on the exhibit  
8 list. This exhibit list is for documents that have been  
9 pre-admitted, with the sole exception of a document that the  
10 Court has allowed to stay on the list pending a foundation.  
11 But the fact that there's something that the door may be opened  
12 on, that should not be on this list. Obviously, if you think  
13 the door's been opened, you can approach the bench. If they --  
14 if the other side raises the objection that you haven't  
15 disclosed it, then you can show that it was on an earlier  
16 witness exhibit list, but the only thing that should be on this  
17 exhibit list is pre-admitted exhibits.

18 MR. ALAVI: Okay. So that's the guidance we needed.  
19 We'll confer with the other side. I think -- I think at least  
20 from my perspective, the guidance is clear. Only admitted  
21 exhibits. If -- I don't think we can pre-admit exhibits that  
22 are subject to the motion in limine. So if the door's open, we  
23 approach and -- and talk to the Judge at that time about using  
24 the exhibits?

25 THE COURT: That's right.

1 MR. ALAVI: Okay.

2 THE COURT: And in the unlikely event that -- that the  
3 claim is that you've not previously disclosed that exhibit,  
4 then bring up the fact that it was on the list before. But it  
5 shouldn't be on the list after this hearing.

6 MR. ALAVI: Thank you, Your Honor. I think we're now  
7 ready to move to the Defendants' exhibits.

8 THE COURT: All right. Who's going to present for the  
9 Defendant?

10 MR. HADDAD: Gerard Haddad for Samsung, Your Honor.

11 I believe the first exhibit, Your Honor, is 1059, and  
12 we'll deal with this in a group, 1059, 1060, 1061, and 1062.

13 THE COURT: All right.

14 MR. HADDAD: Your Honor, each of these documents are  
15 documents authored by the inventor, Mr. Bremer. Each one --  
16 it's hard to see, but at the bottom, it says, you know,  
17 sincerely, Gordon Bremer. On 1069, 1070, 1071, they're all --  
18 I'm sorry, 1059, 1060, 1061, and 1062, each one has -- it  
19 either indicates at the top it's from Gordon Bremer or inside.

20 And so, Your Honor, he wrote it. He's coming live.  
21 And he can lay -- establish that it's not hearsay -- lay the  
22 foundation.

23 THE COURT: Frankly, whether or not he's coming  
24 doesn't have anything to do with whether it's hearsay. But  
25 it -- the use for which you're offering it may have something

1 to do with it. If he's coming, why do you need his documents?

2 MR. HADDAD: Your Honor, this -- these documents  
3 show -- they -- they go to Mr. Bremer when he was employed by  
4 Paradyne, that he was involved with selling patents and -- and  
5 involved with selling and -- and trying to market them to other  
6 people, other -- other entities.

7 THE COURT: Do you need these because you don't think  
8 that Mr. Bremer is going to admit what's -- what's in these or  
9 to refresh his recollection or why -- why is he not simply  
10 going to testify about this?

11 MR. HADDAD: Well, we don't know what -- we don't know  
12 exactly what he'd say at -- at trial, but we -- we can use it  
13 for -- Your Honor, you're right, we could use it to impeach him  
14 if he says something other than what is stated in these  
15 records.

16 THE COURT: Well --

17 MR. HADDAD: But these are records of the -- of -- of  
18 the company he was working for, when he was working there, and  
19 he was the author.

20 THE COURT: Okay. Let -- let me --

21 MR. HADDAD: Very -- it's very similar to  
22 Dr. Goodman's article.

23 THE COURT: We knew what Dr. Goodman was going to say,  
24 I guess. Do you have some reason to think that Mr. Bremer is  
25 going to contradict the contents of these exhibits?

1 MR. HADDAD: No, Your Honor.

2 THE COURT: All right. Let -- let me hear from the  
3 Defendant -- Plaintiff on the objection.

4 MR. ALAVI: Your Honor, what I've heard is they want  
5 to offer these out-of-court statements by Mr. Bremer years ago  
6 for the truth of the matter asserted. It's hearsay. There's  
7 no exception. He's going to come to testify. If he  
8 contradicts an out-of-court statement that he made 10 years  
9 ago, he can be impeached. That's how the document should be  
10 used.

11 THE COURT: You're calling Mr. Bremer as your witness?

12 MR. ALAVI: We're calling him, yes, Your Honor.

13 THE COURT: Okay.

14 MR. HADDAD: Your Honor, there's value in -- in -- in  
15 putting this document in front of the jury to show what he  
16 actually did. He had a pattern. He was -- he was employed by  
17 Paradyne, and had -- and -- and had -- there's a whole series.  
18 There's four documents where he's selling these.

19 THE COURT: These -- tell me about what the exception  
20 is to the hearsay rule or what the non-hearsay use is of it.

21 MR. HADDAD: It -- it's a business record of the  
22 company showing they were looking -- looking to market their  
23 patent -- market their patents, including -- and -- and  
24 Mr. Bremer was involved in marketing those patents, from all  
25 the way back in the early days of the --

1 THE COURT: I -- I don't think you've come close to  
2 satisfying the test of the business records exception. Have  
3 you got something showing this is --

4 MR. HADDAD: Well, he's coming live.

5 THE COURT: Yeah. And --

6 MR. HADDAD: Part of his -- part of his job  
7 responsibilities when he was at Paradyne was to analyze  
8 Paradyne's patent portfolio and figure out who they should send  
9 these letters out to and figure out who to -- to whom they  
10 should be marketing their patents. That was his job  
11 responsibility.

12 THE COURT: And you understand what the test is for  
13 803.6, for business record. And -- I mean, I -- certainly I  
14 don't see any of those satisfied in this, but if you think  
15 that -- I mean, certainly you can question Mr. Bremer about  
16 this, and you can impeach him with it. If he -- if he  
17 testifies in contradiction to what you've got in that document,  
18 but it is a hearsay document. Hearsay documents can be used to  
19 impeach the author, but I'll sustain the objection to 1059  
20 through 1062, and -- but that does not mean that you cannot  
21 seek to impeach him with it if he testifies to the contrary.

22 What's next?

23 MR. ALAVI: Your Honor, the next one is actually a  
24 guidance point or at least to get something on the record.  
25 There are two exhibits, Exhibits 1108 and 1113. These are --

1 one of the exhibits is from a related Rembrandt entity --  
2 that's 1108. The other is 1113. The Plaintiffs -- Plaintiffs  
3 have agreed to withdraw their objections to these documents,  
4 and we've reached an agreement with Samsung that by withdrawing  
5 our objections, that is not a waiver of the -- the motions in  
6 limine that the Court has already granted with respect to  
7 Rembrandt's business practices, and that the parties will use  
8 this -- these two documents consistent with the Court's motion  
9 in limine ruling. We just don't want to on the record waive --  
10 withdraw the objection and then have an argument that we  
11 somehow waived the motion in limine.

12 THE COURT: All right. So what you're saying is that  
13 you believe that the Court has ruled on an in limine basis in a  
14 manner that would cause 1108 and 1109 to be admissible?

15 MR. ALAVI: We do believe that they're admissible, but  
16 they come close enough to the line that we don't want to be  
17 seen as -- by withdrawing our objection, waiving those limine  
18 points that we had previously moved on and the Court has ruled  
19 on.

20 THE COURT: All right. I'll state that your  
21 withdrawal of your objection does not waive your objection to  
22 the Court's motion in limine ruling.

23 What's next?

24 MR. SHERWOOD: Your Honor, I'd like to speak to this  
25 because I have -- maybe not quite a disagreement but something



1 that I do want to raise with respect to this particular -- I'm  
2 looking at actually 1108, Your Honor.

3 THE COURT: You know, at this point, the document's  
4 admissible. Do you have a problem with it being admissible?

5 MR. SHERWOOD: I have a problem with one slide. I  
6 have a problem with Slide 8, Your Honor. And your motion -- in  
7 their motion in limine, they asked that there -- that it be  
8 excluded any reference to essentially the poker playing  
9 activity of an indirect owner of Rembrandt. And what's in this  
10 slide -- I thought it was Slide 8.

11 MR. ALAVI: No, it's the last one.

12 MR. SHERWOOD: I think it's --

13 MR. ALAVI: We'll find it for you, counsel.

14 MR. SHERWOOD: I'm pretty sure it is Slide 8 actually,  
15 at least in my copy it is. Yeah, there you go, Your Honor.

16 It's talking about how the general partner is  
17 contributing profits to a 501(c)(3) charitable organization,  
18 support for under privileged children, and introducing decision  
19 science to school children. And, Your Honor, I think that if  
20 they want to keep out poker playing, which, Your Honor, has  
21 ruled that they will, then so, too, this has to stay out. It's  
22 a goose and gander --

23 THE COURT: This is your exhibit, right?

24 MR. SHERWOOD: It's their document, Your Honor.

25 THE COURT: All you have to do is withdraw it as an

1 exhibit, right?

2 MR. SHERWOOD: Well, Your Honor, I want to use part of  
3 it, but I don't want this to -- this is -- this is something I  
4 think the Court has ruled does not come in, this particular  
5 information. So what I'm asking is that -- that Slide 8 be  
6 removed -- be redacted.

7 THE COURT: All right. Is that something you've  
8 talked to the other side about?

9 MR. SHERWOOD: Yes, Your Honor.

10 THE COURT: And -- and what -- what is the -- the  
11 issue? They object to the removal of this page; is that what  
12 you're telling me?

13 MR. SHERWOOD: That was the sense I got from what  
14 Mr. Alavi said, yes.

15 THE COURT: All right. Mr. Alavi, tell me what --

16 MR. ALAVI: Your Honor, your motion in limine dealt  
17 with the ultimate individual owner of the Rembrandt entities, a  
18 limited partner who -- who receives distributions, and bar  
19 discussion of the fact that he plays poker. This deals with  
20 the general partner of this entity, and it's an ent -- it's a  
21 corporate entity in that it gives its profits to charity.

22 We don't -- we didn't have to withdraw our objections  
23 to this. This is not a document of the Plaintiff. It's a  
24 document of a related entity. They want to use it to make  
25 their case about what a non-practicing entity does. No good

1 deed goes unpunished, from our perspective. We withdrew our  
2 objection, but we don't want it used in a way -- things  
3 redacted that are good. They want the bad, but not the good.  
4 It's unrelated to the motion in limine the Court granted, which  
5 was that they could not discuss that an individual --

6 THE COURT: All right. Thank you.

7 Mr. Sherwood, you can have 1108 in or out. What's  
8 your choice?

9 MR. SHERWOOD: I guess we'll take it in, Your Honor.

10 THE COURT: All right. Thank you.

11 MR. ALAVI: Your Honor, the next -- well, I'll let --  
12 the Defendants' exhibit list. I'm sorry, I jumped the gun.

13 MR. SHERWOOD: So could we put 1120 up on the screen,  
14 please?

15 Your Honor, we talked about this exhibit when we were  
16 together before. It came up in the context of their Motion in  
17 Limine No. 2. And, in fact, on Pages 46 and 47 of the  
18 transcript from that prior hearing, I specifically raised this  
19 drawing which was drawn by Mr. Wood who was a 30(b)(6) dep --  
20 witness for Rembrandt.

21 What it does is it explains what the ownership -- what  
22 the structure is, not ownership. It's the structure of  
23 Rembrandt.

24 Mr. Wood himself, Your Honor, is not an employee of  
25 the Plaintiff, but he was offered as a 30(b)(6) for the

1 Plaintiff because the Plaintiff, in fact, Your Honor, has no  
2 dep -- has no witnesses and needs to have somebody else testify  
3 for it.

4 Motion in Limine No. 2, Your Honor, related to -- and  
5 your order granting that also relates to this, the use of  
6 pejorative terms such as corporate shells, making negative or  
7 disparaging remarks about Rembrandt's corporate structure.  
8 This is a drawing that their 30(b)(6) witness made during the  
9 course of his deposition, explaining how Rembrandt functioned.  
10 And, in fact, Your Honor, explaining where the money came from  
11 for them to buy the patents and where any proceeds would go in  
12 the -- in the Rembrandt network.

13 THE COURT: Why does that matter?

14 MR. SHERWOOD: Why does that matter, Your Honor?  
15 Be -- because we want to show what Rembrandt is, who Rembrandt  
16 is. In other words, we have the right, I think, Your Honor, to  
17 acquaint the jury with -- with who Rembrandt is. And -- and  
18 I'm not proposing that this will be done in a negative or  
19 pejorative way.

20 I mean, just to give you an example of how far they've  
21 taken your ruling, they have objected in the deposition  
22 designations to Mr. Wood, the man who wrote this, even being  
23 able to testify about who he works for. You know, the  
24 beginning of the deposition, we say: Who do you work for? And  
25 they've objected to that, saying that your motion in limine has

1 precluded us from even introducing to the jury who the man is.

2 THE COURT: Well, that -- that is clearly not the  
3 purpose of that ruling. However, this was the purpose of that  
4 ruling. The ownership history of the patents is something that  
5 is relevant and allowable. The corporate structure of  
6 Rembrandt -- I mean, what relevant issue does a jury have to  
7 decide that this relates to?

8 MR. HADDAD: Well, Your Honor, just -- just -- it --  
9 what I said before goes now. This is -- it's the pathway  
10 through which ownership of these patents passed. And, in fact,  
11 Mr. Anaipakos on Page 47 said, we would be fine with the  
12 discussion of chain of title. Well, this drawing was used to  
13 illustrate the structure through which those patents passed to  
14 get from Summit, which you can see here at the bottom right is  
15 a Rembrandt entity, up to Rembrandt Wireless, which has  
16 asserted these claims.

17 THE COURT: Exhibit 1120 is -- the objection is  
18 sustained. I believe that's squarely covered by the ruling on  
19 Motion in Limine No. 2. We've already litigated this issue.

20 MR. SHERWOOD: Your Honor, if -- may I just say that  
21 the ruling at the bottom of Page 47 said that it was granted  
22 except as to the ownership history.

23 THE COURT: Yeah. And you can talk about the  
24 ownership history of the patents. This is not limited to that.

25 MR. SHERWOOD: I understand, Your Honor.

1 THE COURT: All right. What's next?

2 MR. ALAVI: Your Honor, may I help opposing counsel?

3 THE COURT: If he wants help, you may help him.

4 MR. ALAVI: Okay. The next one is 1488.

5 MS. HERMES: I was asking if 1017 had been withdrawn.

6 MR. ALAVI: It was --

7 MS. HERMES: Yes. Okay.

8 MR. ALAVI: It was.

9 MS. HERMES: Then we'll go on to 1488.

10 Your Honor, Defendants' Exhibit 1488 was created by  
11 our damages expert, Dr. Becker. Dr. Becker did a summary of  
12 patents that refer to Bluetooth. Mr. Weinstein bases his  
13 damages model on the Bluetooth chip within the Samsung  
14 products, and in some cases takes a 14-cent royalty on a chip  
15 that costs 30 cents.

16 And so to rebut that sort of analysis, Dr. Becker has  
17 looked at all the patents that cover Bluetooth of which he's  
18 found there are approximately 7,025 patents. The summary would  
19 be admissible under 1006, and the underlying contents, the  
20 patents are not being offered for the truth of the matter  
21 asserted for anything claimed in them but just to establish  
22 that they are, in fact, patents that mention Bluetooth.

23 THE COURT: All right. Let me hear the objection.

24 MR. ALAVI: Your Honor, there's a hearsay objection  
25 and a relevance and prejudice objection. On the hearsay

1 objection, it's classic hearsay. It's a document created by  
2 the expert outside the courtroom.

3 The response that you heard from Samsung is that it  
4 complies with Rule 1006. The problem with that is they've  
5 never made the underlying 7,000 patents available to anyone in  
6 this case, other than their own expert for inspection. We've  
7 never gotten them. They were never produced to us.

8 There's a relevance and prejudice project -- objection  
9 because what did Mr. -- Dr. Becker do? He went and looked for  
10 patents that had the word "Bluetooth" in them. What could that  
11 include? Non-Bluetooth patents. It's fine if he testifies  
12 about the work he did. We will cross him, believe me, but to  
13 take his exhibit which is a search of all patents that use the  
14 word "Bluetooth" --

15 THE COURT: Well, let -- let me just hear back from  
16 Ms. -- Ms. Hermes. Is this just a list of patents that have  
17 the word "Bluetooth"?

18 MS. HERMES: No, Your Honor. It was a more detailed  
19 analysis that's set forth in Dr. Becker's report, and it lays  
20 out that he looked for patents. I -- I don't have them --

21 MS. HIGGINS: Two art units in two patents -- art  
22 units.

23 MS. HERMES: Yeah, he -- he went to specific art units  
24 in a patent search that would be relevant, and then -- and then  
25 from that, he culled it down to -- to companies that were

1 members of Bluetooth SIG. And then -- and then after that,  
2 then he looked to be sure that they mentioned Bluetooth. So  
3 they had to be within certain areas of art. That was to ensure  
4 that they weren't, for example, a patent on a Bluetooth  
5 headphone or something that didn't -- didn't apply, and then  
6 Bluetooth SIG numbers meant that they would be --

7 THE COURT: All right. Have -- have you made the  
8 originals or duplicates of these 7,025 patents available for  
9 examination or copying or both by other parties at a reasonable  
10 time and place?

11 MS. HERMES: Not yet, Your Honor. They're publicly  
12 available.

13 MS. HIGGINS: So the list, Your Honor, is a list of  
14 the patent numbers. So they're -- you know, you can just look  
15 them up.

16 THE COURT: Well, it's certainly not -- not useable  
17 under Rule 1006 -- if you have not complied with the  
18 requirements of 1006. And like other documents that an expert  
19 produces in his report, that's for disclosure purposes to the  
20 other side. They're not admissible just because they were part  
21 of his report. He can talk about them. But I'll sustain the  
22 objection to Exhibit 1488.

23 What's next?

24 MS. HIGGINS: Your Honor, DX 1710 is a  
25 BlackBerry/Bandspeed license. The objections here are



1 relevance, prejudice, and violation.

2 THE COURT: This is a license from --

3 MS. HIGGINS: From Bandspeed to BlackBerry. And  
4 what is significant about this license is that it pertains to  
5 two patents. It pertains to two Bluetooth patents. And so we  
6 are talking about the relevant field here. And specifically,  
7 we believe that in this case once BlackBerry and Rembrandt  
8 settled and we then received a supplemental report from  
9 Dr. Weinstein relying on the BlackBerry/Rembrandt agreement,  
10 that BlackBerry -- then in terms of considering the  
11 hypothetical negotiation, BlackBerry becomes relevant.

12 And I'd like to -- to start with -- with relevance.  
13 This is an agreement that is relevant to the hypothetical  
14 negotiation under Georgia-Pacific Factor 15. It's also  
15 relevant under Georgia-Pacific 12 as to what a company in the  
16 industry would consider licensing technology for in the space  
17 of Bluetooth.

18 THE COURT: And what is this licensing?

19 MS. HIGGINS: This is licensing two Bluetooth patents  
20 that were involved in litigation.

21 THE COURT: What do they have to do with the  
22 patents-in-suit?

23 MS. HIGGINS: They -- they are patents that are in the  
24 same technology. Here, Mr. Weinstein is arguing that the  
25 smallest salable unit is a Bluetooth chip. This is a license

1 for Bluetooth. I will also point out that Mr. Weinstein did  
2 a full analysis of this very license in -- in connection with  
3 the -- the BlackBerry/Rembrandt case, which has settled, and  
4 relied upon this license.

5 And so what BlackBerry would do in -- in a  
6 hypothetical negot -- negotiation in con -- in connection with  
7 what they will argue BlackBerry did in connection with the --  
8 the Rembrandt/BlackBerry -- excuse me, negotiation, is very  
9 relevant here.

10 And in terms of -- you will hear counsel -- they will  
11 also argue that -- that somehow there has been a -- a  
12 violation here of a protective order in the timing of the  
13 production of this agreement and the fact that it was produced  
14 in this case. And I respectfully submit to the Court that that  
15 is just false.

16 In terms of -- I think the timeline is important.  
17 Mr. Weinstein wrote a report where he analyzed this agreement  
18 in this case in his report -- expert report for BlackBerry.  
19 And that was months ago. When -- when BlackBerry and Rembrandt  
20 settled the litigation -- and as Your -- Your Honor knows, that  
21 happened very recently -- we very quickly subpoenaed  
22 BlackBerry. In fact, discovery was extended. We subpoenaed  
23 BlackBerry. We obtained this agreement. And the very next  
24 day, we put it on the Defendants' exhibit list.

25 So we believe it is relevant. There has not been any

1 violation here. And there -- there is no prejudice for  
2 allowing a Georgia-Pacific agreement to be used to  
3 cross-examine Mr. Weinstein who is going to offer opinions with  
4 respect to an agreement -- another agreement regarding  
5 BlackBerry and Rembrandt. And we think this agreement, too, is  
6 relevant to the hypothetical negotiation.

7 THE COURT: Now, the other agreement between  
8 BlackBerry and Rembrandt that Mr. Weinstein's going to testify  
9 about is about the patents-in-suit?

10 MS. HIGGINS: It is. Correct, Your Honor.

11 THE COURT: And how does this license with Bandspeed  
12 have anything to do with that?

13 MS. HIGGINS: Because it has relevance. They are  
14 going to argue about what Blackberry did as a person who  
15 negotiated with Rembrandt in the context of a license  
16 agreement.

17 This is another agreement where -- where BlackBerry  
18 negotiated a settlement, just like it -- it did here in this  
19 case, Your Honor, in the very same industry. In -- in the --  
20 Bluetooth space. It's also with respect to two patents. We  
21 have two patents here.

22 THE COURT: Okay. Thank you.

23 MR. ALAVI: So, Your Honor, I still don't understand  
24 the relevance of the document, but we do have objections to it,  
25 and let me walk the Court through them.

1           The first objection is I'm unclear as to who would  
2 testify about this license. And there are only two options,  
3 Mr. Weinstein and Dr. Becker, and there are problems with both  
4 of them.

5           The first is Dr. Becker. That is Samsung's expert in  
6 this case. He cannot testify about this license because he did  
7 not consider it. He does not have an opinion on it. He has an  
8 opinion on a license between Samsung and Bandspeed. If this  
9 gets in and suddenly their expert testifies, I want to compare  
10 this BlackBerry license to the Samsung license and do some  
11 magic and have some new number for you, that would be an  
12 undisclosed opinion.

13           So the only other person who can testify about it is  
14 Dr. -- Mr. Weinstein, and there's a problem with it, which is  
15 when Mr. Weinstein prepared his expert reports in this case,  
16 including the supplemental report, there was a protective  
17 order. The protective order, which was insisted upon by both  
18 Samsung and BlackBerry, had a provision that prohibited  
19 Mr. Weinstein from cross using documents from one case into the  
20 other case -- that is, if he had BlackBerry information,  
21 including this license, he could not consider it when he was  
22 doing the Samsung expert report.

23           We settled with BlackBerry. They never gave the  
24 Plaintiffs permission to use these documents. So Mr. Weinstein  
25 did his supplemental report using the documents he was allowed

1 to use. And what they want to do in front of the jury is cross  
2 him on a document that he was prohibited from considering. And  
3 when did they get this document? I'm sorry, Your Honor.

4 THE COURT: Mr. Alavi, I -- we were talking about  
5 Bandspeed earlier. That has to do with some settlement  
6 involving Bandspeed. What was that one?

7 MR. ALAVI: That was the Samsung/Bandspeed settlement  
8 agreement that Dr. Becker relies on, and we introduced  
9 documents to impeach Mr. Becker's methodology in using that  
10 license. This is a license between BlackBerry and Bandspeed.

11 THE COURT: All right.

12 MR. ALAVI: And so it would be unfair for him to have  
13 to testify -- how do we explain to the jury -- there were a lot  
14 of BlackBerry documents, quite frankly, that we would have  
15 liked to have used in the Samsung expert report, but couldn't.  
16 And so it's unfair after his reports came, he was -- quite  
17 frankly, at his deposition, the first -- the first time he knew  
18 anyone to be using the BlackBerry expert report, which is a  
19 later exhibit, was during his deposition. We had no disclosure  
20 from -- from BlackBerry that they had given consent to Samsung  
21 for these documents to be used in this case.

22 THE COURT: Okay. Thank you, Mr. Alavi.

23 MS. HIGGINS: Your Honor, may I respond briefly?

24 THE COURT: You may.

25 MS. HIGGINS: Your Honor, so there is --

1 THE COURT: If you would --

2 MS. HIGGINS: May I?

3 THE COURT: Yeah, if you'd go to a microphone. Thank  
4 you. That's fine.

5 MS. HIGGINS: So first of all, there is no prejudice  
6 here. This is an agreement that Mr. Weinstein has fully  
7 considered in this case. It's in his expert report that he  
8 prepared vis-à-vis BlackBerry. And I -- I do want to address  
9 this -- this protective order because I -- I -- I frankly think  
10 it's misleading.

11 So we are talking about the protective order in this  
12 case, which is Document 68. And what that says is that  
13 notwithstanding, the foregoing Plaintiff shall not disclose or  
14 share any designated material, and it says, absent further  
15 order of the Court or without express written permission from  
16 the defending producing party. And so this -- this agreement  
17 was subpoenaed. It was produced so that Samsung could review  
18 it. There is no prejudice because Mr. Weinstein has reviewed  
19 it, reviewed it prior to his report in this case, reviewed it  
20 prior to his deposition. His expert report from that -- that  
21 contains an analysis of this license was actually used at his  
22 deposition. And we have obtained in a declaration of -- of  
23 BlackBerry, which -- which also --

24 THE COURT: Ms. Higgins, I --

25 MS. HIGGINS: -- authenticating record -- a business

1 record.

2 THE COURT: My -- my biggest concern about this is --  
3 is relevance and whether there's any indication that -- that  
4 these -- that the license between Bandspeed and BlackBerry  
5 involves technologically comparable patents. And all you've  
6 told me is that there are two patents within the Bluetooth  
7 space, which you previously represented has more than 7,000  
8 patents in it.

9 MS. HIGGINS: And I -- I can further -- so these  
10 patents relate to something called advance frequency hopping.  
11 The patents-in-suit, the Plaintiff alleges, re -- relate to  
12 enhanced data rate. These are both Bluetooth features, and  
13 you -- they -- they will allege that Bluetooth is the relevant  
14 thing we are talking about here. And this is -- this is an  
15 agreement by a company in that space. And it's not just that  
16 it's a company that's in the space. It is the very company  
17 that they are using to argue here somehow negotiated a license  
18 which their expert purports to convert into some kind of  
19 allocation here. And -- and this is evidence actually that --  
20 that BlackBerry agrees to lump sum agreements, the very type of  
21 agreement that the BlackBerry/Rembrandt agreement is.

22 So we think it is very relevant here to  
23 cross-examination.

24 THE COURT: Have -- have you had any technical expert  
25 testify or report about the comparability of the technology

1 involved in this license compared to the license --

2 MS. HIGGINS: Yes.

3 THE COURT: -- the patents-in-suit?

4 MS. HIGGINS: Yes, sir. Dr. Goodman has so opined in  
5 his expert report that this is comparable technology.

6 THE COURT: And that was on this -- the  
7 Bandspeed/BlackBerry license?

8 MS. HIGGINS: That was, Your Honor, generally and  
9 specifically in connection with the Samsung/Bandspeed license.  
10 The Samsung/Bandspeed license and this license involve the same  
11 patents as in the Samsung/Bandspeed agreement, which the  
12 parties -- which the jury will be hearing about because it is  
13 in Dr. Becker's report.

14 THE COURT: So obviously, Bandspeed entered into a  
15 significantly different license with Samsung than it did with  
16 BlackBerry in terms of the dollar amount?

17 MS. HIGGINS: I don't want to discuss the dollar  
18 amount in open Court, Your Honor.

19 THE COURT: You can either answer the question or not.

20 MS. HIGGINS: Not too different, Your Honor.

21 THE COURT: Then what is the -- the point of it, if it  
22 is to the same effect as the Samsung/Bandspeed license?

23 MS. HIGGINS: Because, Your Honor, it is relevant to  
24 the Georgia-Pacific -- Pacific factors. They are relying on  
25 another BlackBerry/Rembrandt settlement, and that issue there



1 is whether that settlement, quite frankly, is a lump-sum  
2 settlement, or according to this contrived allocation clause,  
3 gets converted into a running royalty rate. This is evidence  
4 that when Samsung sits down to that table with -- with -- with  
5 Rembrandt and they get to rely on -- on the BlackBerry  
6 agreement, this BlackBerry agreement is an agreement that says  
7 that BlackBerry enters into lump-sum licenses --

8 THE COURT: So --

9 MS. HIGGINS: -- and it is a comparable license.

10 THE COURT: -- if we redact the dollar amounts from  
11 this, is there any reason it won't show that?

12 MS. HIGGINS: I -- I think the dollar amount is -- is  
13 relevant, Your Honor.

14 THE COURT: The -- you've told me that you need this  
15 to show that BlackBerry enters into lump-sum --

16 MS. HIGGINS: And -- and -- and the -- the amount of  
17 agreements that they enter into for comparable technology is --  
18 is also something that can be considered here -- should be  
19 considered here.

20 THE COURT: Of course, one of the concerns I have is  
21 the lateness with which this all comes up. When did you  
22 produce this document?

23 MS. HIGGINS: So this doc -- document was produced in  
24 this litigation by BlackBerry. As you heard, Samsung was  
25 precluded from relying on this agreement early on because

1 BlackBerry did not produce it to Samsung. After the  
2 BlackBerry/Rembrandt settlement, we subpoenaed BlackBerry, and  
3 they produced the agreement. And it became -- given the fact  
4 that we had a new piece of evidence here that Dr. Weinstein did  
5 a supplemental report on that implic -- that implicated  
6 BlackBerry, this was already relevant as a comparable license,  
7 and it became more relevant here to the hypothetical  
8 negotiation after the Rembrandt/BlackBerry settlement.

9 THE COURT: So when did you get this license?

10 MS. HIGGINS: So Samsung -- the facts are, Your Honor,  
11 that Rembrandt and BlackBerry settled on November 12th, 2014,  
12 and -- and -- and we subpoenaed BlackBerry soon thereafter.  
13 Discovery was specifically reopened because of that Weinstein  
14 supplemental report about the BlackBerry/Rembrandt agreement.  
15 We subpoenaed BlackBerry in November, and then BlackBerry  
16 pro -- produced to Samsung, pursuant to the subpoena, this  
17 agreement on December 16, 2014.

18 On December 17th, 2014, we immediately put this  
19 exhibit on the trial exhibit list. So there has been no delay  
20 here, Your Honor.

21 THE COURT: This exhibit -- this license was actually  
22 entered into a year ago?

23 MS. HIGGINS: The license was entered into in 2013.  
24 It was produced by BlackBerry in this litigation, but not to  
25 Samsung.

1           THE COURT: What prevented you from subpoenaing this a  
2 year ago?

3           MS. HIGGINS: The Court -- the Court's pro --  
4 protective order was -- was one thing that they argued  
5 precluding -- precluded Mr. Weinstein from analyzing this  
6 license vis-à-vis BlackBerry, and we went, then, and subpoenaed  
7 BlackBerry and -- and sought their permission to use this  
8 agreement.

9           THE COURT: And what prevented you from doing that a  
10 year ago?

11          MS. HIGGINS: BlackBerry had not yet settled with  
12 Rembrandt, Your Honor, and upon that settlement, BlackBerry, as  
13 a party here, which is relevant to the hypothetical  
14 negotiation, had not yet settled yet, so we had a change in the  
15 facts which made this relevant. And as soon as that happened,  
16 we acted quickly upon this to obtain this agreement and produce  
17 it.

18          THE COURT: And your argument about the relevance of  
19 this is that it's based on --

20          MS. HIGGINS: It's a -- it's -- it's a comparable  
21 license. It's relevant to Georgia-Pacific Factor 15. It's  
22 relevant to the hypothetical negotiation. It's also relevant  
23 to Georgia-Pacific Factor 12, which goes to what this license  
24 that is in the comparable BlackBerry space, what -- what people  
25 in the industry would -- would pay for comparable technology.

1 THE COURT: All right. Thank you, Ms. Higgins.

2 Mr. Alavi, tell me what the differences are between  
3 this license and the others that are being considered in this  
4 case.

5 MR. ALAVI: Your Honor, the -- the only license that  
6 our expert relies on is the license between BlackBerry and  
7 Rembrandt for the patents-in-suit. Not different patents that  
8 are similar technology. That license with BlackBerry is a  
9 fully paid-up license that provides BlackBerry with a license  
10 on an ongoing basis. The license between BlackBerry and  
11 Rembrandt is only for past damages. It is expressly for past  
12 damages only and provides no license going forward.

13 But the real issue --

14 THE COURT: Who's relying on a license between  
15 Bandspeed and Samsung?

16 MR. ALAVI: Samsung's expert. And you didn't hear  
17 them say they want Samsung's expert to use this. What you  
18 heard -- and I think the quote is they want to impeach  
19 Mr. Weinstein for not using this when he couldn't use it.  
20 They're going to say, your supplemental report doesn't consider  
21 this Bandspeed license, does it? Your original report doesn't  
22 consider this Bandspeed license. Now, let's go through this  
23 analysis of what your report should have looked like if you had  
24 considered this evidence, which Mr. Weinstein was prohibited  
25 from using under the protective order. If they --

1 THE COURT: All right.

2 MR. ALAVI: -- it'd be a different story if he had  
3 had -- if they had gotten this in discovery before his  
4 supplemental reports were due, if BlackBerry had told us, you  
5 have permission to use it in the Samsung case, he could have  
6 considered it. Now they want trial by ambush.

7 And by the way, produced on December 16th is four days  
8 after the extended discovery cutoff. After Mr. Weinstein's  
9 supplemental report. After he was -- he -- he had considered  
10 all the materials he could have considered. And what they want  
11 to do is say, you didn't consider this. And that's -- that's  
12 the type of prejudice because there's a Court order that  
13 prohibited him from considering it.

14 THE COURT: All right.

15 MR. ALAVI: That is prejudicial with the jury.

16 MS. HIGGINS: It -- it was timely subpoenaed with --  
17 within the extended period, Your Honor. And as soon as we got  
18 it from BlackBerry, we did --

19 MR. ALAVI: The discovery cutoff was December --

20 THE COURT: Just -- Mr. Alavi --

21 MR. ALAVI: I'm sorry, Your Honor.

22 THE COURT: -- you produced it after the discovery  
23 cutoff?

24 MS. HIGGINS: We subpoenaed it during the discovery  
25 cutoff, and then -- and I think as you -- you know, Your Honor,

1 everything was on a very fast-paced schedule here because on  
2 the eve of trial, BlackBerry/Rembrandt have settled. And so  
3 right after that happened, there were -- I mean, there were  
4 days before the supplemental expert report was due. We did  
5 serve the subpoena timely. We -- and as -- as soon as we got  
6 it, and I -- I believe that it was after the close of fact  
7 discovery -- as soon as we got it, we did put it on the exhibit  
8 list and --

9 THE COURT: And is Mr. Alavi correct that you want to  
10 use this in connection with Mr. Weinstein because you feel he  
11 should have considered it?

12 MS. HIGGINS: We don't plan to fault him for not  
13 considering it. We actually -- the man has considered it. I  
14 can show you, if you'd like, Your Honor, his expert report in  
15 this case where he actually analyzed this agreement. So --

16 THE COURT: It was -- now, you're using this case  
17 loosely.

18 MS. HIGGINS: I am, Your Honor. That was the expert  
19 report for BlackBerry.

20 THE COURT: All right.

21 MS. HIGGINS: You are correct, Your Honor.

22 THE COURT: The only reason the Bandspeed patents are  
23 in this case is because your expert is relying upon a license  
24 from Bandspeed?

25 MS. HIGGINS: Correct, Your Honor. He is relying on a

1 license from Bandspeed as a Georgia-Pacific Factor 2 agreement  
2 on -- on comparable technology. And as -- as I said, the --  
3 the jury will hear evidence from Dr. Goodman that this is  
4 comparable technology here.

5 THE COURT: Ms. Higgins, I'm -- I believe it comes too  
6 late. I'm going to sustain the objection to Exhibit 1710.

7 What's next?

8 MS. HERMES: Your Honor, Defendants' Exhibit 1736 --  
9 if we could pull that up, please -- is a chart summarizing  
10 underlying TI chip price data. There's no objection to the  
11 underlying data. This is a Rule 1006 summary of that data.

12 THE COURT: Produced by whom?

13 MS. HERMES: The data was produced by Texas  
14 Instruments.

15 THE COURT: I mean, the chart?

16 MS. HERMES: The chart is from Dr. Becker's report.

17 THE COURT: Okay. So you're offering this as a  
18 summary?

19 MS. HERMES: Yes.

20 THE COURT: All right. Let me hear the objection.

21 MR. ALAVI: Your Honor, we had previously agreed to an  
22 admission of a -- a different summary, so this is duplicative.  
23 But quite frankly, with -- we withdraw our objections to 1736  
24 through 1738.

25 THE COURT: All right. They will be admitted then.

1 Are there any further exhibit objections?

2 MS. HIGGINS: No, Your Honor.

3 THE COURT: All right.

4 MR. ALAVI: I -- I believe -- I believe counsel is  
5 correct, but I think we just need to clarify it for our notes.  
6 1739 was still open, but I think it was tied to the summary  
7 judgment motion because it's the response. And since the  
8 summary judgment didn't come in, I just want to confirm that  
9 counsel is withdrawing it.

10 MS. HIGGINS: That is correct.

11 THE COURT: All right. Are there objections to the  
12 deposition designations?

13 MR. ENGER: Yes, Your Honor, there are.

14 THE COURT: Are any of these depositions -- do any of  
15 them have no active objections, or are there objections to all  
16 of the depositions?

17 MR. ALAVI: Your Honor, we have a summary, so we're  
18 trying to find it.

19 MR. ENGER: So, Your Honor, one thing that the parties  
20 have agreed to or -- or discussed was for the witnesses that  
21 will appear live at trial, tabling our objections for the  
22 depositions because they will not be --

23 THE COURT: Tabling is not going to work. I don't  
24 have any problem simply saying that there will be no admissible  
25 deposition designations as to those people, but the purpose of



1 this and what you were ordered to meet and confer about was to  
2 resolve these and present them timely. And we're here now 9:30  
3 at night, and I believe there's been a failure by counsel to  
4 meet and confer on these matters. And I am close to simply  
5 saying we're not going to have depositions in this trial, and  
6 the jury will enjoy it.

7 If you've got a way that you think you can cut through  
8 this, that's fine. But we're -- anything that has not been  
9 approved today is not coming into trial.

10 MR. ENGER: Okay. Your Honor, I'd -- I'd like to  
11 discuss Rembrandt's designations and Samsung's objections  
12 thereto.

13 THE COURT: Do you have any witnesses -- I -- I don't  
14 want to hear anything from any witness unless they are a  
15 witness that cannot appear live at the trial.

16 MR. ENGER: Understood, Your Honor. There's a number  
17 of witnesses that -- of Samsung witnesses that I understand are  
18 in Korea and will not be coming to trial.

19 THE COURT: Tell me about those.

20 MR. ENGER: The first is Mr. Junhak Lim. And if we  
21 can pull up Mr. Lim's testimony at Page 36, please?

22 THE COURT: How many of these objections have been  
23 resolved?

24 MR. ENGER: The parties have been withdrawing a number  
25 of objections over the last several days. Probably we've

1 whittled it down by at least half, but the ones that are --  
2 as you can see in the document, a number of them say withdrawn  
3 in parenthesis. Those are ones that are no longer live. But  
4 there are a number of -- that are still at issue.

5 THE COURT: I don't see any that say withdrawn.  
6 Where -- where would that be?

7 MR. ENGER: Your Honor, there have been a number of  
8 these that were flying around the last 15 minutes before the  
9 hearing started. But, for example, 36, Lines 24, to 37, Line  
10 17, was withdrawn.

11 THE COURT: You've withdrawn the designation or the  
12 objection?

13 MR. ENGER: The designation. I'm looking through -- I  
14 don't see any -- I recall there are a number of -- of  
15 objections that were also withdrawn by Samsung, for example, to  
16 Mrs. Ko.

17 THE COURT: Let's go on -- tell me about another  
18 witness. This is a current employee of Samsung?

19 MR. ENGER: That's my understanding, yes.

20 THE COURT: All right. So Samsung has the ability to  
21 cause him to appear?

22 MR. ENGER: That's my understanding, correct.

23 THE COURT: All right. Who's your next witness?

24 MR. ENGER: Mr. -- Mr. Kim -- Junghyun Kim.

25 THE COURT: Is he --

1 MR. ENGER: A Samsung witness, as well, also in Korea.

2 THE COURT: All right. Go on to the next one.

3 MR. ENGER: Namhee Ko -- Ms. Namhee Ko, also in Korea.

4 THE COURT: Who's next?

5 MR. ENGER: Mr. Tim Benner. We've issued a trial  
6 subpoena to him. My understanding is he will be appearing live  
7 at trial.

8 THE COURT: All right. Who's next?

9 MR. ENGER: Mr. Mark Powell. This is one of the  
10 representatives of the Bluetooth SIG.

11 THE COURT: And where is he located?

12 MR. ALAVI: Your Honor, we're withdrawing -- we've  
13 resolved objections to exhibits which as a result, we're  
14 withdrawing all of our affirmative designations of Mr. Powell.

15 THE COURT: All right. So you no longer have a need  
16 for him?

17 MR. ALAVI: That's correct, Your Honor.

18 THE COURT: All right. Who's next?

19 MR. ENGER: Mr. Joel Linsky. He is a Qualcomm -- I  
20 believe he's a Qualcomm employee, possibly a Broadcom employee  
21 living in California, third party.

22 THE COURT: Okay. Who's next?

23 MR. ENGER: Stephen Hall. My understanding is  
24 Mr. Hall will be appearing live at trial by -- Samsung will be  
25 bringing him.

1 THE COURT: All right. Who's next?

2 MR. ENGER: Mr. Robert O'Hara. Again, I -- my  
3 understanding is he will be appearing live at trial, brought  
4 by -- by Samsung.

5 THE COURT: All right.

6 MR. ENGER: Next is Paul Schneck. That's a Rembrandt  
7 employee, and we're bringing him to trial. So I don't see the  
8 need to discuss his deposition designations.

9 THE COURT: All right.

10 MR. ENGER: Next is Mr. David Misunas. He's the  
11 30(b)(6) representative for Zhone, the entity from which  
12 Rembrandt acquired the patents.

13 THE COURT: And will he be coming?

14 MR. ENGER: He will not be.

15 THE COURT: Where is he located?

16 MR. ENGER: In California, I believe, Bay Area.

17 MS. HIGGINS: Your Honor, we can withdraw objections  
18 to Mr. Misunas. There's only a few remaining. We withdraw  
19 them.

20 THE COURT: All right. Then we have no issue about  
21 Mr. Misunas' deposition?

22 MR. ENGER: Not with respect to Rembrandt's  
23 designations, Your Honor.

24 THE COURT: Okay.

25 MR. ENGER: The next witness is Mr. Manvir -- Manvir

1 Kalsi.

2 THE COURT: And --

3 MR. ENGER: That is a Samsung witness who I do not  
4 believe will be appearing at trial.

5 MR. ALAVI: And, Your Honor, Plaintiffs withdraw all  
6 their affirmative designations from Mr. Kalsi, but we may  
7 have -- we -- I think we have counter designations to what  
8 Samsung may have designated, and those are still live.

9 THE COURT: All right.

10 MR. ENGER: There's testimony designated for  
11 Mr. Gordon Bremer, although he will be appearing live at trial.

12 THE COURT: All right.

13 MR. ENGER: And there is one line of testimony  
14 designated for Mr. Derek Wood who may or may not be appearing  
15 live at trial, but there's no objections to that, so there's  
16 nothing to resolve.

17 THE COURT: All right. Let me hear from the  
18 Defendants on their deposition designations.

19 MR. LING: Your Honor, Vincent Ling on behalf of  
20 Defendant, Samsung.

21 We've withdrawn a number of desig -- of deposition  
22 designations and counter designations, which I'll walk the  
23 Court through.

24 THE COURT: All right. And it would be helpful if you  
25 would speak at the podium. We'll get a better recording of

1 your presentation. And could you give me your name again, sir?

2 MR. LING: All right. Vincent Ling.

3 THE COURT: Okay. Go ahead.

4 MR. LING: So beginning with -- we've withdrawn  
5 designations for Mr. -- sorry, Ms. -- Ms. Kim -- oh, sorry,  
6 those are the objections. We've -- we've withdrawn  
7 designations for Namhee Ko.

8 THE COURT: And -- all right. I'm looking at the  
9 list --

10 MR. LING: It should be Page -- around Page 16.

11 MS. HIGGINS: So, Your Honor, in -- in terms of actual  
12 objections, if -- if the Court would like to hear those.  
13 Mr. Ling and Mr. Haddad are -- have sort of divvied up the  
14 transcripts.

15 THE COURT: At this point, I would like to --

16 MS. HIGGINS: We can walk you through the -- the  
17 people, if you would like.

18 THE COURT: That's what I would like.

19 MS. HIGGINS: So, Your Honor, Mr. Benner, the -- the  
20 first person is a Samsung employee, and he will -- he has been  
21 subpoenaed and is scheduled to appear live.

22 I believe we just heard Rembrandt tell us that Gordon  
23 Bremer, the inventor, will be --

24 THE COURT: Let --

25 MS. HIGGINS: -- appearing live.

1 THE COURT: Let me go -- all right. Let me just slow  
2 you down.

3 On Timothy Benner, if he's appearing live, why should  
4 his deposition be used other than for impeachment.

5 MS. HIGGINS: If -- if -- if counsel were to designate  
6 some -- he was a 30(b)(6) witness, Your Honor, so if they were  
7 to designate some -- some testimony, we -- we could technically  
8 have a counter designation. I -- I think it's probably  
9 unlikely.

10 MR. ALAVI: Your Honor, we are not going to designate  
11 anything for Mr. Benner who is coming live. We just didn't  
12 know if he was coming or not. We thought maybe there'd be a  
13 motion to quash the subpoena, but he's here live, no  
14 designations from us.

15 MS. HIGGINS: And then no counters are needed either,  
16 Your Honor.

17 THE COURT: All right. Then Mr. Benner's deposition  
18 will not be used.

19 All right. Now, Mr. Bremer is next.

20 MS. HIGGINS: Yes, Your Honor. Mr. Bremer is the  
21 inventor, and we understand that counsel for Rembrandt will be  
22 calling Mr. Bremer live.

23 MR. ALAVI: That's correct, Your Honor.

24 THE COURT: Then Mr. Bremer's deposition will not be  
25 used, except for impeachment, and you don't need to designate

1 it for impeachment in advance, so we will not need to cover  
2 that.

3 MS. HIGGINS: On Page 8, Your Honor, is Stephen Hall,  
4 and Mr. Hall is also scheduled to be called by Samsung live.  
5 He's a third party.

6 THE COURT: Then Mr. Hall's deposition will not be  
7 used.

8 Mr. Kalsi?

9 MS. HIGGINS: Mr. Kalsi, I believe I just heard  
10 counsel say that they have withdrawn their affirmative  
11 designations, and, therefore, we have no designations, Your  
12 Honor.

13 THE COURT: So Mr. Kalsi's deposition will not be  
14 used.

15 Mr. Junghyun Kim?

16 MS. HIGGINS: Mr. -- I'm -- I'm just looking through  
17 here, Your Honor, and there are only a few objections  
18 remaining. Mr. Kim is in Korea, and he is not appearing live.  
19 He was a 30(b)(6).

20 THE COURT: We will --

21 MR. ALAVI: Your Honor, may I just speak to this? The  
22 only objections that they had are with respect to optional  
23 completeness. In other words, with respect to our initial  
24 designations, if you look at Page -- starting on Page 14, there  
25 are no objections. We -- we made some counter designations,



1 and they just asked to read additional material as -- in the  
2 interest of optional completeness.

3 THE COURT: There appear to be extensive objections by  
4 Samsung to Rembrandt's designations about Mr. Kim. And the two  
5 are matters that I'm going to have to decide together. What --  
6 why can't Mr. Kim be here to testify?

7 MR. HADDAD: Your Honor, he's located in Korea.

8 THE COURT: I understand that. He's got a week.

9 MR. HADDAD: Well, Your Honor, we're not -- we're --  
10 we are not designating any test -- obviously designating any  
11 testimony for Mr. Kim. It's only the testimony that's been  
12 designated by Rembrandt. They took his deposition.

13 THE COURT: All right. We'll come back to Mr. Kim.

14 MR. HADDAD: They -- if they have no affirmative  
15 designations --

16 THE COURT: We'll come back to Mr. Kim.

17 MR. ENGER: We do have affirmative designations, Your  
18 Honor.

19 THE COURT: What about -- is it Mr. Ko?

20 MS. HIGGINS: Your Honor, it is Ms. Ko.

21 THE COURT: Ms. Ko.

22 MS. HIGGINS: She was Samsung's 30(b)(6) licensing  
23 designee. And Ms. Ko is in Korea. And as you -- you can see,  
24 there's very little testimony which has been designated, and  
25 I -- I see one count -- well, I'm not even sure. I think -- I

1 don't even think we have any issue here. Everything looks like  
2 it's been withdrawn in this direction.

3 Did I miss something, Mr. Enger?

4 MR. ENGER: We -- we have a number of affirmative  
5 designations, Your Honor.

6 MS. HIGGINS: Okay.

7 THE COURT: Well, we'll -- we'll get back to those.  
8 But as to -- as to Samsung's designations as to Ms. Ko, those  
9 are at this point without objection, I take it; is that right?

10 MS. HIGGINS: Yes.

11 THE COURT: All right. Let's go to Junhak Lim -- Lim.

12 MS. HIGGINS: Mr. Lim is -- is a Samsung employee.  
13 He was a 30(b)(6) technical witness, and Mr. Lim is in Korea.  
14 His deposition was taken. And I believe there are designations  
15 in -- in both directions. And as you can see, Your Honor, a  
16 lot of effort to with -- withdraw those objections.

17 MR. HADDAD: Samsung is withdrawing its affirmative  
18 designations of Mr. -- Mr. Lim.

19 THE COURT: All right.

20 MS. HIGGINS: Mr. Linsky, on Page 19, Your Honor, is a  
21 third-party witness who was deposed, and I don't believe he's  
22 expected to appear live.

23 THE COURT: Where is he?

24 MS. HIGGINS: Is it Pennsylvania?

25 MR. HADDAD: Mr. Linsky is in Southern California,

1 Your Honor.

2 MS. HIGGINS: Sorry.

3 MR. HADDAD: We are -- Samsung withdraws all its  
4 objections to Rembrandt's designations, Your Honor, to  
5 Mr. Linsky.

6 THE COURT: All right.

7 MR. HADDAD: And that -- with respect to our  
8 designations, Your Honor, Rembrandt had no objections for  
9 Mr. -- of just -- just to optional completeness. That's right.  
10 Otherwise, there's no dispute. Yeah.

11 THE COURT: So Mr. Linsky, who is the  
12 Qualcomm/Broadcom representative, his designations by Rembrandt  
13 are without objection; is that what I'm hearing, Mr. --

14 MR. HADDAD: Yes -- yes, Your Honor.

15 THE COURT: -- Haddad?

16 MR. HADDAD: He's -- he's from Qualcomm, Your Honor --

17 THE COURT: All right.

18 MR. HADDAD: -- so we have a separate witness from  
19 Broadcom who is coming live.

20 THE COURT: All right.

21 MR. HADDAD: That's Mr. Hall. And, yes, Your Honor,  
22 we were -- Samsung is withdrawing its objections to Rembrandt's  
23 designation -- initial designations.

24 THE COURT: And as to your designations, the only  
25 objection is the optional completeness?

1 MR. HADDAD: Yes. Yes, Your Honor.

2 THE COURT: All right. Then those objections will be  
3 sustained, meaning that you will add in the designations that  
4 Rembrandt seeks to have added?

5 MR. HADDAD: Yes, Your Honor.

6 THE COURT: All right. Go -- go ahead, Ms. Higgins.

7 MS. HIGGINS: Your Honor, the next witness is David  
8 Misunas on Page 21. David Misunas is a third-party witness who  
9 was deposed from the company Zhone. That's a -- a Zhone in the  
10 Rembrandt patent sale agreement. And as can you see, Your  
11 Honor, I think there's only just a -- a very few Rembrandt  
12 objections that we haven't been able to resolve.

13 I'm -- I'm looking at Page 57 on Page 22. I -- I  
14 don't think there are others. It looks like there's another  
15 one on Page 23, at Line -- Page 132.

16 THE COURT: And who is sponsoring Mr. Misunas?

17 MS. HIGGINS: We -- Your Honor, Samsung will be  
18 designating some of Mr. Misunas's testimony.

19 THE COURT: And so where are the live objections as to  
20 Mr. Misunas? Those are Rembrandt's objections?

21 MS. HIGGINS: Yes, sir.

22 MR. ENGER: Your Honor, I believe there's at least one  
23 Samsung objection, as well.

24 THE COURT: That's not what I heard.

25 MR. ENGER: Are you withdrawing the objections to Page

1 158?

2 MS. HIGGINS: Hold on.

3 MR. ENGER: Okay.

4 MS. HIGGINS: Your Honor, earlier I -- I said that we  
5 with -- withdrew our remaining objection. We -- I withdrew  
6 those about 15 minutes ago.

7 THE COURT: Okay. So is there -- does Rembrandt have  
8 a live objection to Mr. Misunas's deposition testimony?

9 MR. ENGER: Your Honor, I believe there are two live  
10 objections.

11 THE COURT: Where are they?

12 MR. ENGER: They are at Page 57 and Page 132.

13 THE COURT: And what's the objection with Page 57?

14 MR. ENGER: We'll withdraw this objection, Your Honor.

15 THE COURT: All right. So is there any remaining  
16 objection to Mr. Misunas?

17 MR. ENGER: Page 132 through 134, Your Honor.

18 THE COURT: And what's that objection?

19 MR. ENGER: Your Honor, it's -- it's not relevant.  
20 It's unduly prejudicial. There's lack of personal knowledge,  
21 no foundation. What -- what's basically going on here is  
22 they're comparing a redline between the -- the patent sale  
23 agreement that occurred in 2007 for these patents with a very  
24 different patent sale agreement that occurred in 2006 and  
25 trying to draw all comparisons between the two. That doesn't

1 make any fact at issue in this dispute any more or less  
2 relevant.

3 THE COURT: And what is the other license or agreement  
4 that they're trying to compare it to?

5 MR. ENGER: It's an earlier patent sale agreement  
6 between Rembrandt and Zhone, and they're trying to draw  
7 distinctions between the two.

8 THE COURT: All right. That objection is overruled.

9 Next is Mr. O'Hara. Are there any objections to  
10 Mr. O'Hara's deposition testimony?

11 MR. HADDAD: Your -- Your Honor, Mr. O'Hara is coming  
12 live.

13 THE COURT: Good. Then his deposition will not be  
14 used.

15 What about Mark Powell?

16 MS. HIGGINS: Mr. Powell, Your Honor, is -- was  
17 deposed. He is a third-party employee for the Bluetooth  
18 Special Interest Group, and -- and we have affirmatively  
19 designated some of Mr. Powell's testimony specifically, for  
20 example, in connection with the Bluetooth Special Interest  
21 Group license.

22 THE COURT: And what are the remaining objections to  
23 Mr. Powell's deposition testimony?

24 MR. ENGER: Your Honor, there was -- there was one  
25 live dispute on Page 51 and 52 of Mr. Powell's deposition.

1 Rembrandt is with -- is withdrawing that objection.

2 THE COURT: All right. So the deposition designations  
3 listed by Samsung for Mr. Powell are admitted, and I understand  
4 that -- Mr. Enger, that the Plaintiff has withdrawn its  
5 designations for Mr. Powell; is that still true?

6 MR. ENGER: Yes, Your Honor.

7 THE COURT: Okay. Mr. Schneck? He'll be here live,  
8 so his deposition will not be used.

9 MR. SHERWOOD: Your Honor, may I just raise one thing  
10 in that respect?

11 THE COURT: You may, Mr. Sherwood.

12 MR. SHERWOOD: As the Court is aware, there's been  
13 supplemental briefing with respect to Mr. Schneck, and  
14 specifically his cross-examination. I don't know if the Court  
15 wants to hear about that now or -- or how the Court wants to  
16 proceed with respect to that. The parties filed supplemental  
17 papers, as you know.

18 THE COURT: And -- yeah, I think -- all right. We can  
19 take -- we can take that up now.

20 Remind me, this was a matter that was ruled on as a  
21 motion in limine; is that right? I know that --

22 MR. ENGER: That's correct, Your Honor. It was not  
23 clear to us whether your ruling covered the supplemental  
24 briefing as to Dr. Schneck or whether it was limited -- or  
25 whether it was more broad than that.

1 THE COURT: Frankly, it's been a long time since I  
2 looked at that supplemental briefing this morning. My  
3 recollection is that it didn't change anything, but I'm trying  
4 to remember now what the issue was.

5 MR. ENGER: Your Honor, the issue was whether  
6 Dr. Schneck, who at the time, was designated as a corporate  
7 representative on a small narrow group of topics --

8 THE COURT: He was also -- just a minute, Mr. Enger.  
9 He -- there's no dispute that he was also noticed as a 30(b)(1)  
10 witness?

11 MR. ENGER: That's correct, Your Honor.

12 THE COURT: In that case, the fact that gave his  
13 answers in both capacities, I -- I don't think makes any of the  
14 deposition less admissible.

15 You -- you simply are worried that they're going to  
16 point out that there were things he didn't know at the time his  
17 30(b)(6) deposition because he had not been asked to prepare  
18 for them?

19 MR. ENGER: That's right. He was not designated in  
20 those topics at the time, and now at trial, he will be our  
21 trial corporate representative on a much broader scope, and it  
22 wouldn't be fair to impeach him on the testimony whenever he  
23 was just in his individual capacity and on a narrow topic of  
24 scope.

25 THE COURT: Why not? All -- all it would be is that



1 the jury would find out that whatever he knows, he recently  
2 learned.

3 MR. ENGER: Your Honor, it -- you know, he -- he has a  
4 pretty important title at -- at Rembrandt. I think he's a  
5 treasurer and a chairman in a number of aspects. And to  
6 suggest that he had limited personal knowledge at one time and  
7 now has a -- a broader corporate knowledge we think would be  
8 unduly prejudicial.

9 THE COURT: But you knew he was being individually  
10 deposed, as well?

11 MR. ENGER: At the time, he was not the best person to  
12 talk on those particular topics, but whenever you have to pick  
13 one person overall to serve as your corporate representative,  
14 Dr. Schneck is the best person to do so.

15 THE COURT: I understand that. But I -- I don't think  
16 there's anything wrong with the Defendants pointing out that in  
17 his personal capacity, he did not know these things. And he  
18 can explain why he now knows them, but I -- I think that -- you  
19 know, if he had not been noticed for an individual deposition,  
20 it would be a different result, but because he was, I'm going  
21 to overrule that objection.

22 MR. ENGER: Thank you, Your Honor.

23 MR. SHERWOOD: Your Honor, may I just comment on one  
24 thing with respect to this?

25 THE COURT: All right. I mean --

1 MR. SHERWOOD: There -- there is no such thing as a  
2 corporate trial representative in terms of testimony.

3 THE COURT: I understand that. What -- what is -- why  
4 are we going into this? I mean, is there a live issue about  
5 something?

6 MR. SHERWOOD: Well, it would relate to competency,  
7 Your Honor, which I guess we can raise at trial.

8 THE COURT: If --

9 MR. SHERWOOD: I understand you've ruled on their  
10 motion in limine. I'm not addressing that at all. I've gone  
11 on to something else.

12 THE COURT: You're objecting to his competence now as  
13 a witness on behalf of his company?

14 MR. SHERWOOD: What I'm saying, Your Honor, is that he  
15 is limited in his testimony, as Rule 602 says, to what he  
16 is comp -- what he has personal knowledge on. He can't be  
17 prepared in the sense of people sit in a conference room and  
18 tell him things. That's just repeating hearsay which clearly  
19 is not -- not allowable.

20 THE COURT: Whether or not -- you know, personal  
21 knowledge is something that is acquired just like any other  
22 kind of knowledge. And if it is recently acquired, that may be  
23 a basis to cross-examine him about it. If you believe that he  
24 cannot establish a foundation of personal knowledge, then you  
25 should object, but certainly this man is the CEO; is that --

1 MR. SHERWOOD: Chairman, I think, yeah.

2 THE COURT: Chairman? Well --

3 MR. SHERWOOD: Of -- of Rembrandt, the parent. I  
4 don't know if he is of all the other companies.

5 THE COURT: Okay. Well, if you -- certainly you can  
6 object based on lack of personal knowledge to anything that  
7 he's asked, if you think you have a valid objection for it.  
8 But there is nothing that says that personal knowledge cannot  
9 be obtained just like any other.

10 MR. SHERWOOD: Thank you, Your Honor.

11 THE COURT: So -- all right. And his deposition is  
12 not going to be used except for impeachment obviously.

13 What about Mr. Wood?

14 MR. ENGER: Your Honor, we have no affirmative  
15 designations for Mr. Wood, although there are live objections  
16 to Samsung's designated testimony, as I understand it.

17 THE COURT: Who is Mr. Wood?

18 MR. ENGER: Mr. Wood is Rembrandt's corporate counsel.

19 MS. HIGGINS: Which we understand is -- he's a  
20 30(b)(6) witness, and we understand that he won't be coming  
21 live to trial.

22 MR. ALAVI: We -- we don't plan on bringing him live  
23 at this time.

24 And, Your Honor, with Mr. Wood's deposition, what  
25 you're going to find is a lot of the testimony, for example,

1 relates to motion in limine points, such as the -- that exhibit  
2 that has the chart that the Court excluded.

3 MS. HIGGINS: And obviously, Your Honor, in view of  
4 that ruling, those designations will be with -- withdrawn.

5 THE COURT: So what testimony does Samsung intend to  
6 offer of Mr. Wood by deposition?

7 MS. HIGGINS: Your Honor, Mr. Wood, he's a Rembrandt  
8 employee. He was offered as a 30(b)(6) witness with respect to  
9 certain topics. He also was the Rembrandt representative who  
10 signed -- there is a Rembrandt/ARRIS agreement that our expert  
11 witness, Dr. Becker, will be opining about. He signed that  
12 agreement, and there was some testimony with respect to that  
13 agreement. So it's a combination of some 30(b)(6) topics, plus  
14 that agreement.

15 THE COURT: Basically, what do we have left here?  
16 We've got Mr. Wood, who is a Rembrandt employee. We've got  
17 Mr. Lim --

18 MS. HIGGINS: Your Honor, Ms. Ko, and I -- I think she  
19 will be very quick, if I may address her?

20 THE COURT: Let me see. All right. Tell me about  
21 Ms. Ko.

22 MS. HIGGINS: Okay. Your Honor. First of all, Ms. --  
23 Ms. Ko is in Korea. She was Samsung's 30(b)(6) on the topic of  
24 licensing. We have sought and obtained an agreement from  
25 Rembrandt's counsel that we do not need to bring her live, and

1 we can play a very short clip of her deposition.

2 THE COURT: I thought we already went over her  
3 deposition and it was okay.

4 MS. HIGGINS: There's one out -- there's -- there's  
5 one outstanding objection. We can withdraw all other  
6 objections. But I -- if I can -- there is testimony that we  
7 have objected to that has been designated by Rem -- Rembrandt  
8 which we believe is covered by a MIL. It says: Do you have  
9 any reason to doubt that Samsung paid approximately -- and it's  
10 a very large number with many, many figures -- to Qualcomm for  
11 patent licenses? And so that Q&A, we believe, is covered by  
12 the MIL, and so as long as we -- we have agreement that it is,  
13 we have no other objections.

14 MR. ENGER: I'm not sure we agree that that's covered  
15 by that very specific MIL, but we'll withdraw that objection.

16 MS. HIGGINS: There -- there is also testimony in here  
17 about --

18 THE COURT: Hold on. You're withdrawing an objection,  
19 or you're withdrawing --

20 MR. ENGER: The designation. I'm sorry, Your Honor.

21 THE COURT: All right. And that designation is where?

22 MS. HIGGINS: It is Page 44, Line 12, and it -- it  
23 first -- 12 through 14 asks about a Qualcomm license and how  
24 much was paid. The answer is at 44, Line 17/18. And then  
25 she's also asked about a very large sum agreement that Samsung

1 paid Ericsson, both irrelevant agreements.

2 So that extends now to 45, 2. So it's 44, 12, down to  
3 45, Line 2, Your Honor.

4 THE COURT: All right. Mr. Enger, is that withdrawn,  
5 as well?

6 MR. ENGER: Yes, Your Honor.

7 THE COURT: All right. So where does that leave us  
8 with respect to Ms. Ko?

9 MR. ALAVI: Your Honor, I wasn't clear. Did Samsung  
10 withdraw all the rest of their objections?

11 MS. HIGGINS: Yes, Your Honor.

12 MR. ALAVI: Okay. Then we're done with Ko. Then I  
13 think we're done with Ms. Ko, Your Honor.

14 THE COURT: All right. So who else do we have? We  
15 have Wood, Lim, and Kim?

16 MR. ENGER: I believe that's correct.

17 MR. SHERWOOD: Your Honor, I think I can boil it down  
18 on Mr. Wood, if I may proceed?

19 THE COURT: All right.

20 MR. SHERWOOD: So the -- on Page 39 of the -- of the  
21 document that the Court has before us, I think that as somebody  
22 for Rembrandt said, the first four designations are covered by  
23 the Court's ruling with respect to structure. So we understand  
24 that we'll not be able to play those.

25 THE COURT: All right. Those are out.

1 MR. SHERWOOD: The objections that Rembrandt has made  
2 with respect to privilege, going over to Page 40, and the --  
3 the next one where there's an objection is Page 30, Line 12,  
4 through 31, Line 3. And the only thing that I think is still  
5 alive there is -- is -- is the privilege, and -- and I've  
6 looked at those. And I understand those are covered by the  
7 Court's rulings, so -- so that's with -- not withdrawn, but we  
8 won't play that. And the same with respect to the next two  
9 entries where there's also a privilege objection.

10 MR. ENGER: So -- so the -- the deposition testimony  
11 at Pages 30 through 31, the entries where we've objected on  
12 privilege, those are withdrawn?

13 MR. SHERWOOD: They're not withdrawn, but I understand  
14 we can't play them.

15 THE COURT: All right. In other words, the objection  
16 is sustained.

17 MR. SHERWOOD: Right. Right. And then looking down  
18 the page, Your Honor, the -- the designation beginning at  
19 33:13, again, address -- is the structure issue that the  
20 Court's already ruled on, as is the next one, starting on Page  
21 34, Lines 5 to 20. So we understand we cannot play those.

22 THE COURT: All right. The objection will be  
23 sustained as to those, as well.

24 MR. SHERWOOD: Then there's no objection for the next  
25 two designations, and then, Your Honor, starting on Line -- on

1 Page 37, Line 9, this is -- this is where I -- I guess there's  
2 a dispute, but this testimony is about the sale transaction.  
3 And we understand the Court's ruling with respect to the pro  
4 rata allocation, but that testimony doesn't begin until Page  
5 38, Line 4. So we understand we cannot play that. It carries  
6 on from Page 38, Line 4, down to Page 39, Line 7. But what  
7 comes before it on Page 37 and the very top of 38, including  
8 the purchase price, that is not covered by the Court's ruling,  
9 and we should be able to play that.

10 THE COURT: What's the objection to that part?

11 MR. ENGER: None, Your Honor.

12 THE COURT: Okay. So Line 37, 9, to 39 -- I mean, to  
13 38, 4, or 38, 3, I guess --

14 MR. SHERWOOD: 38, 3, Your Honor, yes. Right.

15 THE COURT: -- comes in.

16 MR. SHERWOOD: And then, Your Honor, turning over to  
17 the next page, Page 41, the first -- looks like five  
18 designations, again, all relate to the path of the money used  
19 to buy the patents and so forth, which we understand the  
20 Court's ruling with respect to not being able to play that.

21 THE COURT: All right.

22 MR. HADDAD: And then you can see, we've withdrawn  
23 several designations going down the page, and then starting on  
24 Page 60, there are no objections, so we obviously can play  
25 those. And that carries through over to Page 42. The



1 designation on -- on Page 82, we'll withdraw that one.

2 THE COURT: And the objection's sustained as to the  
3 designations on 102 and 103.

4 MR. SHERWOOD: Yes, Your Honor, correct.

5 THE COURT: All right.

6 MR. SHERWOOD: And we can withdraw the -- the very  
7 last one, as well.

8 THE COURT: All right.

9 MR. SHERWOOD: So just -- just for the record, that  
10 would be --

11 THE COURT: That takes care of Mr. Wood.

12 MR. SHERWOOD: Yeah. But just for the record, that  
13 last designation starts on Page 130.

14 THE COURT: So the designation on 130 and 131 is  
15 withdrawn?

16 MR. SHERWOOD: Yes, Your Honor.

17 THE COURT: Okay. Does that leave us anything other  
18 than Mr. Lim and Mr. Kim?

19 MR. ENGER: Not that I'm aware of, Your Honor.

20 THE COURT: Anything from your side, Mr. Sherwood?

21 MR. SHERWOOD: I don't think so, Your Honor.

22 THE COURT: All right. We're going to take a brief  
23 recess now. I'd like counsel to meet further on Mr. Lim and  
24 Mr. Kim, and we'll come back and look at them.

25 LAW CLERK: All rise.

1 (Recess.)

2 LAW CLERK: All rise.

3 THE COURT: Thank you. Please be seated.

4 Mr. Enger?

5 MR. ENGER: Your Honor, I'm pleased to report that we  
6 were able to work out all of our objections to the deposition  
7 of Mr. Lim and almost all of our objections to the deposition  
8 of Mr. Kim.

9 THE COURT: All right. Refer me to a page.

10 MR. ENGER: The one outstanding objection is at Page  
11 106.

12 THE COURT: Actually I mean, a page of the exhibit  
13 first.

14 MR. ENGER: Page 7 of Rembrandt's amended trial  
15 deposition designations.

16 THE COURT: Okay. All right.

17 MR. ENGER: Your Honor --

18 MR. ALAVI: Is this Kim?

19 MR. ENGER: This is Lim -- I'm sorry, this is Kim.

20 MR. ALAVI: Kim?

21 MR. ENGER: Kim.

22 Your Honor, this objection relates to the issue of  
23 spoliation, which Your Honor has already ruled on a motion in  
24 limine about. As -- as you will recall, your motion in limine  
25 did not preclude Plaintiff from acquiring as to the existence,

1 maintenance, or production of Bluetooth-related documents.  
2 There's been a number of lines of testimony preceding this that  
3 we think establish pretty conclusively that some -- some  
4 documents were destroyed. They're no longer maintained by the  
5 test lab, but the -- the particular testimony that I'd like to  
6 refer you to starts at Page 106, Line 6, and I believe it's  
7 being pulled up now on the screen.

8 We don't believe there's anything inappropriate about  
9 this. This was Samsung's corporate representative on the  
10 topics of -- of its PIC's documents.

11 THE COURT: All right. Let me hear the objection.

12 MR. HADDAD: Your Honor, as counsel for Rembrandt  
13 mentioned, there was a motion in limine that excluded any  
14 mention of spoliation or destruction of documents. That was  
15 what the motion was. The motion was granted, however, the --  
16 it did not preclude Plaintiff from -- I'm just reading from it,  
17 Your Honor, require -- from the inquiring into the existence,  
18 maintenance, or production of Bluetooth-related documentation.  
19 We had a -- nearly six-hour deposition where they -- they  
20 drilled into location of documents and -- and how they're  
21 maintained and where they are.

22 And we have a few documents, Your Honor -- a few  
23 questions, Your Honor, where the impression is made that --  
24 that documents were destroyed, and yet there's no evidence that  
25 documents were destroyed. The background here is that --

1 THE COURT: All right. What -- what language are you  
2 objecting --

3 MR. HADDAD: Specifically, Your Honor, I guess it's up  
4 on the board there, 106 -- I'm -- I'm sorry, 106, Line 6. Is  
5 it appropriate for the test lab to destroy the compliance  
6 folders for a particular product? I don't think it's  
7 appropriate is the answer. Then continuing on: What did  
8 Samsung do to ensure the test labs didn't destroy the  
9 compliance folders? There's been no evidence leading up to  
10 this that there's been any destruction of any documents, and  
11 now they're asking him, you know -- you know --

12 THE COURT: All right.

13 MR. HADDAD: -- what -- how -- and it goes on, Your  
14 Honor, again and again on the next -- 107: Did Samsung do  
15 anything to ensure the test labs didn't destroy the compliance  
16 folders? If we find that a certain test lab destroys such  
17 information -- oh, that was -- that was the answer -- we  
18 wouldn't use it again.

19 Then the question was: Mr. Kim, I'm not trying to be  
20 tricky here. If Samsung did something to ensure that these  
21 compliance folders were not destroyed, I want you to tell me  
22 about it. If Samsung did do anything to ensure these  
23 compliance folders were not destroyed, I want you to tell me  
24 that, too. And the response was: So we never imagined that  
25 information would be destroyed.

1           And then -- then the final question is: Is that what  
2 happened here, these compliance folders were destroyed? And  
3 he's -- he makes kind of an odd answer. I think there might  
4 have been a translation problem. I do not know about the  
5 product list.

6           And then the next question was: Do you know? Okay.  
7 So, Your Honor, the -- the -- the line of -- the line of  
8 questioning begins at 106, Line 6, and ends at 108, Line 14.  
9 And then we have a counter designation through Line 18 on that  
10 same page.

11           And -- and basically, they're assuming -- he's  
12 assuming that -- that -- in each of these questions, they're  
13 assuming that -- that a destruction of documents has happened  
14 when none has been shown.

15           THE COURT: All right. Let -- let me hear from  
16 Mr. Enger.

17           MR. ENGER: Your Honor, what the previous testimony  
18 that they've agreed can come in shows is that Samsung had an  
19 obligation to maintain these compliance folders. Samsung did  
20 not comply with that -- that requirement and instead designated  
21 these compliance folders to its test labs.

22           And in this line of questioning it's saying, what did  
23 you do to ensure that the test labs didn't destroy the  
24 documents? The answer is: I didn't do anything. We never  
25 believed that they would destroy anything. We didn't check,

1 but they would never maliciously do this.

2 THE COURT: Do you have evidence that the test labs  
3 destroyed the records?

4 MR. ENGER: Only the inference, Your Honor, which is  
5 that they were required to maintain these. They no longer  
6 exist. We've asked for this evidence since the beginning of  
7 the case, and it was never produced to us.

8 THE COURT: All right. So all of the questions about  
9 the test lab destroying the records are -- are based on the  
10 inference that you don't have the records?

11 MR. ENGER: No, the -- the inference is that they were  
12 required to keep them and that they -- whenever we asked them  
13 for them, they could not give them to us because they don't  
14 have them. They -- I think the only inference is that they  
15 were destroyed.

16 THE COURT: I'll sustain the objection to those  
17 questions at Page 106 to 108. I don't believe that there's a  
18 foundation to put an argument of destruction of documents  
19 before the jury.

20 What's next?

21 MR. ENGER: That's all, Your Honor.

22 THE COURT: All right. Any other issues regarding  
23 Mr. Kim?

24 MR. HADDAD: No, Your Honor.

25 THE COURT: Are there any other issues regarding the

1 deposition designations?

2 MR. ENGER: No, Your Honor.

3 THE COURT: Mr. Alavi, you said that you have  
4 something you want to take up regarding the scope of the IPR --

5 MR. ALAVI: That's correct, Your Honor.

6 THE COURT: -- limine? What is that?

7 MR. ALAVI: So we understand the Court's ruling and  
8 understand the basis for it. There's one issue that we want to  
9 raise and seek clarification on.

10 As the ruling currently stands, and if both parties  
11 abide by the MIL, that is, no one opens the door, the jury will  
12 never hear that the Patent Office considered the WiFi standard  
13 or Boer in connection with these two patents. The problem that  
14 we have, or we want to make sure -- actually, that's the  
15 question.

16 The problem we have is that the patent video that the  
17 jury's going to hear tells them what a patent looks like and  
18 tells them if you want to see what prior art was considered,  
19 you go to a section of the patent and look at it. A jury could  
20 take the patents back to the jury room -- one the jurors, and  
21 we see this in trials or when we talk to jurors -- can go and  
22 say, hey, look, Boer and WiFi were never considered by the  
23 Patent Office. And that could influence the jury discussion in  
24 the jury room. And that's just not a true fact.

25 And so we would be prejudiced if the jury came away

1 with the impression by listening to the patent video and  
2 looking at the patent and concluding that the Patent Office  
3 never considered Boer or the WiFi standard.

4           So the question is, we understand the Court doesn't  
5 want us to get into the IPRs, doesn't want us to relitigate the  
6 IPRs, doesn't want to tell the jury that Samsung filed all  
7 these IPRs. And we understand their arguments. We disagreed  
8 with them, but we understand the Court's ruling. But are we  
9 precluded from letting the jury know that even though it's not  
10 listed on the face of the patent, the Patent Office did, in  
11 fact, consider the WiFi standard and Boer in connection with  
12 these patents?

13           And we think we should be able to, otherwise the jury  
14 will be left with a false impression by listening to the  
15 Court's patent video and by looking at the patent, and we would  
16 be prejudiced. I mean, there's no way for us, other than being  
17 allowed to talk about that very, very minor point, not that it  
18 was in an IPR, not what the IPR standard is, not that Samsung  
19 filed all these IPRs, but simply that, in fact, these two  
20 references were considered by the Patent Office so that we  
21 don't have a misleading impression of what the real facts are.

22           THE COURT: You know, that ruling was based upon Rule  
23 403 and the balancing of the risk of confusion and prejudice in  
24 introducing the IPRs to the jury. And I'm going to deny your  
25 request on the same basis. I think that would inevitably lead



1 to either confusion in the jury's mind or explanations about  
2 why those would be considered by the Patent Office, and I  
3 understand your request, but it is denied.

4 MR. ALAVI: Thank you, Your Honor.

5 The second issue is related to the Court's ruling on  
6 the motion to seal the courtroom with respect to the BlackBerry  
7 license, and we understand we're not to discuss the amount of  
8 the BlackBerry license in open court. But the question we have  
9 is -- for the Court is what would the Court like us to do with  
10 the exhibit which is the BlackBerry license and particularly  
11 when it pops up on the screen and the amount, how does the  
12 Court want us to deal with that?

13 MS. HIGGINS: And -- and, Your Honor, this is an issue  
14 that Samsung feels is very, very important here, too. You  
15 know, the parties, Rembrandt, Samsung, and third-party  
16 BlackBerry all -- all collectively requested that the courtroom  
17 be sealed and expressly for a very limited purpose with respect  
18 to the -- the Rembrandt settlement amount and allocation, and  
19 we have -- we have very serious concerns if we're not able to  
20 discuss the amount of that agreement in connection with the  
21 allocation clause, and there's really no way to separate the  
22 one from the other.

23 And -- and so Samsung respectfully requests that the  
24 Court reconsider -- there's a one-liner in your motion in  
25 limine that says: In lieu of sealing the court, the parties

1 are hereby ordered not to discuss the amount of this agreement.  
2 And we would request that the Court give consideration to  
3 sealing for this very limited purpose. We understand that it  
4 happens sometimes. In fact, the only, you know, party here  
5 that can be in the courtroom is Samsung. And -- and that's --  
6 that is acceptable to Samsung.

7 And we think it's -- it's really a critical issue, and  
8 we want the full and fair opportunity to be able to  
9 cross-examine Mr. Weinstein.

10 THE COURT: Why does the amount need to come in?

11 MS. HIGGINS: Because the -- what Mr. Weinstein  
12 admittedly did here was take a -- a royalty number that was  
13 manufactured by Rembrandt. He multiplied by a number of units,  
14 and he came up with -- with a total amount. And we want to be  
15 able to -- to present through the cross of -- of Mr. Weinstein  
16 what happened here. And -- and in order to have the ability to  
17 cross-examine the witness, we believe that we need -- it's  
18 critical to be able to discuss everything in the agreement  
19 and -- and that it -- that there -- there's an issue of  
20 fairness if we're not able to do so.

21 THE COURT: I don't think everything in the agreement  
22 is relevant, and that is the reason why -- I -- I think that --  
23 you know, the reason why you want to get that information  
24 before the jury, I don't think, is based on any -- any  
25 relevance it has, but rather the effect of the numbers.

1 MS. HIGGINS: But, Your Honor, there -- there are  
2 emails which are coming into evidence that -- that show that --  
3 that BlackBerry sent a number to -- to Rembrandt, and they  
4 said, this lump sum number, let us know if this is a number  
5 that -- that that your expert can -- can use going forward.  
6 And so that -- that's a reference to num -- the lump-sum  
7 number.

8 And -- and frankly, what's going on here is they  
9 want to take a lump-sum agreement and through an allocation  
10 clause -- and Your Honor knows our position on this -- but  
11 through that allocation clause, they -- they want to improperly  
12 convert it into a lump-sum agreement, and we're entitled to --  
13 to cross-examine Mr. Weinstein on the -- the full scope of  
14 the -- the agreement, which the -- the one thing that -- that  
15 is clear that the parties did agree to here, Your Honor, is --  
16 is the lump sum.

17 That allocation clause is -- it explicitly says in the  
18 agreement that BlackBerry does not agree to an allocation. And  
19 so we feel that -- that the jury should hear that -- that that  
20 is what the parties agree to. And it's fine Your Honor has  
21 ruled that in addition to that, they get to hear about the  
22 allocation. But Samsung would be highly prejudiced here if  
23 there wasn't a full and fair opportunity to -- to cross-examine  
24 the witness. And the sealing of the courtroom can be -- can be  
25 very, very limited here to --

1 THE COURT: So what part of it, other than the number,  
2 are you saying you are prevented from going into?

3 MS. HIGGINS: So, I mean, it is the -- it's the math,  
4 Your Honor. There's the -- the number that is in turn divided  
5 into two smaller numbers. And then Mr. Weinstein uses those  
6 two smaller numbers to divide by units and then calculate  
7 royalty rates.

8 And so Mr. Weinstein, even in explaining what he did  
9 here, has to do the math. And for us not to be able to discuss  
10 with him the math, it just seems like, you know, you're -- our  
11 hands would be tied, Your Honor.

12 THE COURT: And --

13 MS. HIGGINS: And so if -- if the -- you know, the  
14 agreement has -- you know, is coming in, but -- but we feel we  
15 should -- we should be able to fully cross-examine the --

16 THE COURT: All right.

17 MS. HIGGINS: -- witness on the --

18 THE COURT: Mr. Alavi, what's your response?

19 MR. ALAVI: Your Honor, I think they want the number  
20 in to anchor the jury. Samsung is a company that is  
21 substantially larger in unit sales than BlackBerry. They want  
22 to anchor the number. I think the math -- there is no dispute  
23 that Mr. Weinstein did division properly. The math is not at  
24 issue.

25 The issue is -- the only issue -- the only issue is

1 the position that Samsung has taken that you should ignore the  
2 allocation in its entirety, and, therefore, the entire  
3 agreement should be ignored. And that can be done without  
4 showing the number. I think we can redact the number. They  
5 can -- all the language they want to use is the language after  
6 the allocation that says BlackBerry does not agree to an  
7 allocation. They can do the emails if they want to  
8 cross-examine Mr. Weinstein with the emails. They don't need  
9 the number.

10 I think they're just trying to anchor the jury, and  
11 it's not necessary. I think we can comply with the Court's  
12 order and not seal the courtroom. We can redact the number and  
13 redact it on the exhibit that the jury sees, and -- and  
14 everyone can cross-examine Mr. Weinstein about his approach,  
15 but there's no dispute that he did division correctly, that is,  
16 that he took the denominator and the numerator and got to the  
17 right result.

18 MS. HIGGINS: Your Honor, and Rembrandt did agree with  
19 the motion to seal the courtroom, and I actually think what's  
20 going on here is the opposite, that they're trying to take  
21 advantage of the fact that we're not actually able to look at  
22 the math now.

23 And one of the significant things about the math, Your  
24 Honor, if you look at it, is that the numerator will be many,  
25 many digits, and they will be three, four, five, six, seven,

1 eight. And interestingly, the denominator will also be three,  
2 four, five, six, seven, eight, so that it equals 10. And part  
3 of what's going on here is that -- that 10 comes from the fact  
4 that Mr. Weinstein worked backwards.

5 And we should be able to present what -- what really  
6 happened here to the jury, and part of the whole  
7 Georgia-Pacific analysis here is what -- what the party --  
8 they're the ones that want to rely on the agreement. What the  
9 parties -- we're going to talk about the negotiations and what  
10 they agreed to.

11 The only thing here, as I said, Your Honor, that they  
12 agreed to is that number. And the other numbers, too, and the  
13 math is -- is critical here.

14 THE COURT: All right. I -- I note your objection,  
15 and it is overruled.

16 What's next?

17 MR. ALAVI: Your Honor, those were all the issues that  
18 the Plaintiffs had.

19 THE COURT: All right.

20 MR. ALAVI: I should say this. We're prepared and are  
21 marking the exhibit list to be able to provide either tonight  
22 or first thing tomorrow morning a list of everything that's  
23 pre-admitted. But -- and we're -- we've worked a little bit on  
24 that already, and we're -- we're going to finish that up  
25 promptly.

1 THE COURT: All right. We'll get to the timing on  
2 that in a moment.

3 Let me see, there was -- Mr. Sherwood, you indicated  
4 that you had some matters that you wanted to raise. As -- as  
5 far as the -- the motion for summary judgment on the marking  
6 issue, we have that on the briefs, and we'll get a -- a ruling  
7 out on that shortly.

8 But you had another matter on -- I think something to  
9 do with the invocation of privilege and -- and something else?

10 MR. SHERWOOD: Right, Your Honor. And -- and that is  
11 very simply, again, a kind of goose/gander kind of thing, which  
12 is to say that in presenting a witness, and they've -- they've  
13 identified a number of areas in the objections with respect to  
14 deposition designations where they show that there was a -- a  
15 question that they believe invaded the privilege. I don't  
16 think they should be able to go into any of that subject  
17 matter with any of those witnesses. I think that's a logical  
18 import of the Court's ruling, and I just wanted to confirm  
19 that.

20 THE COURT: If what you're saying is that there are --

21 MR. SHERWOOD: What I'm saying is they're saying that  
22 they want to use the privilege as a shield. And so in -- in  
23 effect, what they cannot do as a sword is then elicit  
24 testimony, not privileged, but in the subject matter area that  
25 that question that they asserted privilege to covered.

1           So, for example, there was a question of Dr. Schneck,  
2 something about an improvement in the claims in these patents  
3 versus the other patents. So that would be an example of  
4 something where they said, oh, can't ask him about that because  
5 the only thing he knows about that is privileged. Well, Your  
6 Honor, I don't think he should be able to testify on that  
7 subject at all, and that's all I'm trying to confirm here.

8           THE COURT: You're saying that -- and is this with  
9 regard to any witness other than Schneck?

10          MR. SHERWOOD: Well, maybe Mr. Wood, as well.

11          THE COURT: All right. So what you're asking is for a  
12 ruling that if the Plaintiff has asserted a privilege when you  
13 asked questions of their witness during a deposition that they  
14 should not be entitled to elicit testimony from the witness on  
15 that subject?

16          MR. SHERWOOD: On that subject matter, yes, Your  
17 Honor, exactly.

18          THE COURT: All right. And are there particular  
19 subject matters that you have in mind, or are you -- I mean, I  
20 don't know if you will agree with them or they will agree with  
21 you about what that subject matter is.

22          MR. SHERWOOD: Well, they -- they gave us a long list  
23 of parts of the depositions where they asserted privilege, so  
24 that would seem to me to be a pretty good guide. I don't -- I  
25 admit I don't have a list of those --



1 THE COURT: All right.

2 MR. SHERWOOD: -- readily available for the Court.

3 THE COURT: Let -- let me hear from the Plaintiff on  
4 that.

5 Mr. Alavi, do you intend to ask questions on a subject  
6 matter on which you asserted a privilege?

7 MR. ALAVI: Your Honor, that's -- let me say this to  
8 start with, no, with the caveat that I think what Mr. Sherwood  
9 talked about since it was fairly vague is -- it could be  
10 broader than what everyone agrees the sword/shield issue is.  
11 If a witness answered a ques -- was asked a question and there  
12 was a privilege objection, we understand that you cannot come  
13 and ask that witness that same question and have them answer  
14 that question. You've waived the privilege. There's a  
15 sword/shield problem.

16 But if you ask a witness, what did the general counsel  
17 tell you about X, and you assert a privilege, and that's the  
18 only question asked in the deposition, but that witness had a  
19 conversation with a third party about that topic, that  
20 conversation with that third party wouldn't be privilege.

21 So I'm a little concerned about the just because you  
22 assert a privilege, the entire topic is governed. But we have  
23 no intention, if we objected on the basis of privilege, and if  
24 it was a broad topic. If it was what do you know about the  
25 continuation process, and the answer is, everything I know is

1 privileged, well, we can't get into that. We understand that.  
2 If it was what did you talk to the prosecution attorneys about  
3 this prosecution? What did you tell them and what did they  
4 tell you? And we assert a privilege, and then there's some  
5 other topic about -- that wouldn't fall in the privilege, I  
6 think we're allowed to do that.

7 THE COURT: All right.

8 MR. SHERWOOD: Your Honor, may I just comment on that  
9 briefly?

10 THE COURT: Mr. Sherwood, do you have a specific area  
11 that you want to raise? If so, I might be able to offer  
12 something definitive, but I agree with you. I think everybody  
13 agrees with you, that if the subject matter really is the same,  
14 then they can't go into that. But I think the devil is in the  
15 details there, and it's whether it's the same subject matter  
16 is what I think will have to be worked out. And I don't know  
17 of any way to do that other than with specifics, and, you  
18 know --

19 MR. SHERWOOD: Well, I can -- I can -- I appreciate  
20 the Court's comments. I can give you a specific now. But --  
21 but -- but you're right, the devil is in the details. And the  
22 questions that were asked were not the questions that Mr. Alavi  
23 was talking about. We don't ask a question where we know we're  
24 eliciting privileged information. We're all sophisticated  
25 enough to know not to do that. These were all more open-ended

1 questions.

2           So, for example, in Dr. Schneck's deposition, on Page  
3 115, the question was asked, is one way that the claims might  
4 operate better, that they cover more products, for example?  
5 And the witness's answer was: I don't know anything about that  
6 that isn't privileged. So you're right, that's a broad subject  
7 matter, and there are a bunch of these in here, Your Honor.

8           And -- and so I -- I'll take the Court's guidance,  
9 such as you've already given it to us, and appreciate that the  
10 devil is in the details, understanding that every one of these  
11 broad topics -- it wasn't a situation of a focused question.  
12 They were all broader issues. And so, you know, any  
13 discussion, for example, by this witness about how the claims  
14 might operate better is out of bound because they invoked the  
15 privilege when we asked them that question in the deposition.  
16 And I think the Court has agreed with me on that, appreciating  
17 that there's some definitional challenges here.

18           THE COURT: I agree with you on the general principle.  
19 And I'm afraid I'll just have to leave it to you to urge  
20 objections where you think they're appropriate.

21           MR. SHERWOOD: That's fine, Your Honor. Thank you.

22           THE COURT: Okay.

23           MR. ALAVI: And, Your Honor, just on the devils in the  
24 details, so they asked him, Mr. Schneck, the question about the  
25 specific patents, and he says, I don't know. And then they ask

1 him general questions. Well, let's not talk about these  
2 patents. Let's just talk about patents in general. What would  
3 be the reasons why you would seek a continuation to expand the  
4 claims? And he answers the questions. That, I think, would  
5 not violate what we've talked about because there was no  
6 objection lodged. There was only a specific objection about  
7 that particular patent.

8           So I think it's the -- as you said, the devil's in the  
9 details. We have no intention, because I don't want to waive  
10 the privilege, Your Honor. I've seen it happen in a trial  
11 where someone got cute and got the privilege waived, so we're  
12 going to be very careful on those issues.

13           THE COURT: Okay. Good.

14           I -- I need new exhibit lists that both sides have  
15 blessed by 12 hours from now, 11:00 o'clock tomorrow morning.  
16 And the same thing for deposition designations. So I -- I will  
17 need those to be delivered to chambers by 11:00 tomorrow. And  
18 if there are remaining issues, we will take them up at that  
19 time.

20           Mr. Ward?

21           MR. WARD: One agreement that we've reached, Samsung  
22 and Rembrandt, subject to the Court's approval, deals with  
23 reallocating some time from that provided for voir dire to  
24 opening. The Court gave us 40 minutes for voir dire. Our  
25 co-counsel are concerned about not having enough time for

1 opening. We have 25 minutes. We were going to suggest that we  
2 have 35 minutes for voir dire and 30 minutes for opening, if  
3 the Court would permit it.

4 THE COURT: I think that will be acceptable. And all  
5 I can tell you is that I'll -- I'll get that answer for you  
6 tomorrow.

7 MR. WARD: Thank you, Your Honor.

8 MR. SMITH: Thank you, Your Honor.

9 MR. ALAVI: Your Honor, I just want to make sure we  
10 get you the right thing at 11:00 o'clock. On the exhibit list,  
11 all you want are the exhibits that have been pre-admitted. All  
12 other exhibits should be removed from the list?

13 THE COURT: Right.

14 MR. ALAVI: And then --

15 THE COURT: With the exception of -- I know there was  
16 at least one that you're to lay a foundation by Mr. Kerry, I  
17 think it is, and I think that's the only one that was  
18 specifically reserved for a foundation.

19 MR. ALAVI: And then for those in which you've  
20 sustained an objection, would you like the objection listed  
21 there and then -- because we have a checkmark and overruled.  
22 That way the -- the Court has the full record, or do you just  
23 want admitted, not -- you know, just admitted?

24 THE COURT: As long as there is no doubt that the --  
25 which exhibits are pre-admitted and -- and which are not, I

1 don't care if you -- if -- if for some reason it's easier to  
2 leave the ones that have been ruled out on there with a clear  
3 indication that they're not admitted, I'll leave that to you.  
4 But I need the list to clearly show what's pre-admitted and  
5 what's not.

6 MR. ALAVI: We'll take care of it.

7 Thank you, Your Honor.

8 THE COURT: Okay. Any other questions? If not, we're  
9 adjourned. Thank you.

10 LAW CLERK: All rise.

11 (Hearing concluded.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shelly Holmes

SHELLY HOLMES, CSR-TCRR

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